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PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18,198

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY,
Respondents.

To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondents Walton Manufacturing Company and Loganville Pants Company, their officers, agents, successors, and assigns, Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218.

In support of this petition the Board respectfully shows:

(1) Respondents are Georgia corporations engaged in business in the State of Georgia within this judicial circuit

where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 21, 1959, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondents, their officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 38 (1) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order

which relate specifically to the Respondents herein, and requiring Respondents, their officers, agents, successors, and assigns to comply therewith.

(Signed) Thomas J. McDermott
Thomas J. McDermott
Associate General Counsel
NATIONAL LABOR
RELATIONS BOARD

Dated at Washington, D. C.
this __ day of

ORDER TO FILE PETITION

Filed: Feb. 4, 1960

In The United States Court of Appeals
For The Fifth Circuit.

No. 18,198

National Labor Relations Board,
Petitioner,

versus

Walton Manufacturing Company and
Loganville Pants Company,
Respondent.

A Petition for Enforcement of an Order of the National Labor Relations Board made on October 21, 1959, in the proceeding known upon the records of the Board as Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218 having been presented to this Court;

IT IS ORDERED that said Petition be filed and the case docketed as of February 4, 1960, and;

IT IS FURTHER ORDERED that the National Labor Relations Board file with the Clerk, a certified copy of the transcript of proceedings, or in lieu thereof, a certified list of all the documents, transcripts of testimony, exhibits and other material comprising the record of the proceeding

before the National Labor Relations Board, in the above entitled matter, within forty days from this date as required by Rule 38, as amended.

(Signed) EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit.

ANSWER OF RESPONDENTS TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Number and Title Omitted)

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The National Labor Relations Board having filed with this Court its petition for enforcement of an order of said Board against Respondents, Walton Manufacturing Company and Loganville Pants Company, the Respondents hereby file their answer to said petition and respectfully request this Court to set aside in its entirety the Board's said order. A brief will be filed with this Court by Respondents setting forth more fully Respondents' position with respect to said order.

In response to the petition, Respondents, Walton Manufacturing Company and Loganville Pants Company, respectfully show:

1.

Respondents admit that they are Georgia corporations engaged in business in the State of Georgia, within the jurisdiction of this Court, as alleged in paragraph 1 of the petition.

2.

Respondents admit that on or about October 21, 1959, the Board stated its finding of fact and conclusions of law, and issued to Respondents the order as set forth in paragraph 2 of the petition. Respondents also admit the allegation of paragraph 2 of the petition that on or about that date, through their counsel, they were served with a copy of the said order. Respondents deny, however, that said order is a legal order and that the said findings of fact and conclusions of law are correct in any respect. Respondents deny that the procedures followed by the National Labor Relations Board in arriving at said findings of fact, conclusions of law, and order are in accordance with law. Respondents further deny that said findings of fact, conclusions of law, and order are supported by substantial evidence, as required by law, and particularly by the National Labor Relations Act, as amended.

3.

Respondents, relying upon a certificate from the Clerk of this Court, admit the allegations contained in paragraph 3 of the petition that the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the en-

tire record of the proceeding before the Board as alleged in paragraph 3 of the petition.

For further answer to the petition for enforcement, Respondents respectfully show:

1.

Respondents deny that they or either of them have engaged in any of the conduct from which they are ordered to cease and desist as set forth in Petitioner's order.

2.

Respondents deny that they have, in any respect, violated Section 8 (a) (1) or Section 8 (a) (3), or any other section of the National Labor Relations Act, as amended, as set forth in the Board's findings of fact and conclusions of law, and state that Petitioner's findings of fact, conclusions of law, and order of October 21, 1959, are erroneous, invalid, and illegal, and the same are not based upon the evidence but are contrary to the evidence.

3.

Respondents deny that they have, in any manner, engaged in any unfair labor practices as defined in the National Labor Relations Act, as amended.

WHEREFORE, Respondents pray that this Court deny the petition for enforcement of said order, and each and every prayer thereof; that this Court set aside said order in its entirety on the grounds that: the procedures fol-

lowed by the Board in this case were not in accordance with the law, that the findings of fact of Petitioner are not supported by substantial evidence, and that the conclusions of law of Petitioner are erroneous and the said order is illegal and void; Respondents further pray that the petition be dismissed and that they be discharged.

This the 23rd day of February, 1960.

WILSON, BRANCH AND
BARWICK
(Signed) By ROBERT T. THOMPSON
(Signed) By ALEXANDER E. WILSON, JR.

CERTIFICATE OF SERVICE

United States Court of Appeals
For The Fifth Circuit

National Labor Relations Board,
Petitioner,
versus Case No. 18,198

Walton Manufacturing Company and
Loganville Pants Company,
Respondent.

The undersigned certifies that five (5) copies of the Respondents' answer in the above case were this day served by first class mail upon the following counsel at the address listed below:

Thomas J. McDermott
Associate General Counsel
National Labor Relations Board
Washington 25, D. C.

This the 23rd day of February, 1960.

(Signed) ROBERT T. THOMPSON

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
For The Fifth Circuit

No. 18,198

National Labor Relations Board,
Petitioner,

versus

Walton Manufacturing Company and
Loganville Pants Company,
Respondents.

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board — Series 7, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire record of a consolidated proceeding had before said Board and known upon its records as Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

VOLUME I — Exhibits introduced in evidence, also rejected exhibits:

GENERAL COUNSEL'S EXHIBITS

*1-A thru 1-L, inclusive
2-A and 2-B
2-C rejected
2-D and 2-E
2-F rejected
2-G thru 2-J, inclusive
3, 4 and 5
6-A and 6-B
7 thru 10, inclusive
11-A and 11-B rejected
12 thru 16, inclusive, rejected
17-A thru 17-D rejected
18-A and 18-B, rejected
19
20-A thru 20-C, rejected
21 thru 25, rejected
26-A and 26-B, rejected; 27 and 28, rejected
29; 30-A and 30-B; 31-A and 31-B; 32-A and 32-B; 33-A and 33-B; 34-A and 34-B; 35-A and 35-B; 36-A thru 36-C; 37-A and 37-B; 38-A and 38-B; 39-A and 39-B; 40-A and 40-B; 41-A and 41-B; 42-A and 42-B; 43-A and 43-B; 44; 45-A and 45-B; 46; 47-A and 47-B; 48-A and 48-B; 49-A thru 49-C; 50-A and 50-B; 51-A and 51-B; 52-A thru 52-C; 53-A thru 53-C; 54-A thru 54-C; 55-A and 55-B; 56-A and 56-B; 57-A and 57-B; 58-A and 58-B; 59-A thru 59-C; 60-A thru 60-C; 61-A 61-C, 62-A thru 62-C; 63-A thru 63-C; 64-A thru 64-C; 65-A thru 65-C; 66-A thru 66-C; 67-A and 67-B; 68-A thru 68-C; 69; 70-A and 70-B; 71-A thru 71-C; 72-A

*General Counsel's Exh. 1-A through 1-L, 2-A, 2-D, 2-G and 2-I and 3 are contained in Volume III.

thru 72-C; 73-A and 73-B; 74-A thru 74-C; 75; 76; 77; 78-A and 78 B

RESPONDENTS' EXHIBITS

1 thru 12, inclusive; 13; 14-A and 14-B; 15 and 16; 17-A and 17-B; 18-A and 18-B; 19-A and 19-B; 20 thru 22, inclusive; 23-A and 23-B; 24; 25-A and 25-B; 26; 27-A and 27-B; 28-A and 28-B; 29; 30-A and 30-B; 31-A and 31-B; 32; 33-A and 33-B; 34-A and 34-B; 35-A and 35-B; 36-A and 36-B; 37-A and 37-B; 38; 39-A and 39-B; 40-A and 40-B; 41-A and 41-B; 42-A and 42-B; 43-A and 43-B; 44-A and 44-B; 45-A and 45-B; 46; 47-A and 47-B; 48 and 49; 50-A and 50-B; 51-A and 51-B; 52-A and 52-B; 53-A and 53-B; 54; 55-A and 55-B; 56; 57-A and 57-B; 58-A and 58-B; 59-A and 59-B; 60 thru 62, inclusive; 63-A and 63-B; 64-A and 64-B; 65 and 66; 67-A and 67-B; 68 thru 70, inclusive; 71-A and 71-B; 72-A and 72-B; 73 thru 75, inclusive; 76-A and 76-B; 77-A and 77-B; 78 and 79; 80-A and 80-B; 81; 82-A and 82-B; 83-A and 83-B; 84 thru 88, inclusive

CHARGING PARTY'S EXHIBITS

1 and 2

VOLUME II *CERTIFIED RECORD*

Stenographic transcript of testimony taken before Trial Examiner Samuel Ross on October 15, 16, 17, 20, 21, 22 and 23, 1958 1 - 1528

VOLUME III - Pleadings

1. Copy of Trial Examiner's Intermediate Report and Recommended Order dated May 15, 1959 1 - 50

2.	General Counsel's exceptions to the Intermediate Report received June 19, 1959	1 - 9
3.	Correction to General Counsel's exceptions to Intermediate Report received June 24, 1959	1 - 2
4.	Amalgamated Clothing Workers of America AFL-CIO (Charging Party herein) exceptions to the Intermediate Report received June 29, 1959	1 - 3
5.	Respondents' exceptions to the Intermediate Report received June 29, 1959	1 - 36
6.	Copy of Decision and Order issued by the National Labor Relations Board on October 21, 1959	1 - 12

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this ___ day of ___

(Signed) Frank M. Kleiler
Frank M. Kleiler
Executive Secretary
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3127

Date Filed
12-11-57

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
Walton Mfg. Company

Number of Workers Employed
App. 165

Address of Establishment (Street and number, city, zone, and State)
Loganville, Ga.

Type of Establishment (Factory, mine, wholesaler, etc.)
Manufacturer

Identify principal product or service
Manufacturer of suits

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.
(List subsections)

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On Dec. 3, 1957, in violation of Section 8 (a) (1) and (3) of the National Labor Relations Act, the above named employer discharged Lucille Yancey because of her membership in and activities in behalf of the Amalgamated Clothing Workers of America, AFL-CIO, a labor organization, in order to discourage membership in said organization.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Amalgamated Clothing Workers of America, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, N. Y.

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
AFL-CIO

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, N. W., Washington, D. C.

Telephone No.
Republic 7-5353

7. Declaration
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Rep.
(Title, if any)

Dec. 9, 1957
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

December 12, 1957

Walton Mfg. Company
Loganville, Ga.

Re: Case No. 10-CA-3127

Gentlemen:

Please be advised that a Charge has been filed with this office alleging that you have engaged in unfair labor practices in violation of the National Labor Relations Act, as amended. Enclosed herewith you will find a copy of such charge for your notice and information.

The investigation of this matter has been assigned to Supervising Attorney Frank E. Hamilton, Jr., whose address is shown above.

I would appreciate receiving from you a written statement of your position respecting the allegations set forth in the Charge. Please feel free to present in support of such statement affidavits and such records as may be necessary for full presentation of your position.

During the course of this investigation I will appreciate your cooperating fully with the members of this staff. In the event you desire any further information please feel free to call upon the Supervisor handling this matter.

Very truly yours,

(Signed) WALTER C. PHILLIPS
Walter C. Phillips
Regional Director

Enclosure:
Charge (1)

REGISTERED MAIL
RETURN RECEIPT REQUESTED
435975

I certify that I served the above referred to charge this day by postpaid registered mail on the addressee named above, together with a transmittal letter of which this is a true copy.

(Signed) E. J. McDERMOTT

Subscribed and sworn to before me this 13th day of Dec. 195

(Signed) J. FRANCES
Designated Agent

Post Office Department
Official Business
NLRB 10th Region ATLANTA

Penalty For Private Use To Avoid
Payment of Postage, $300
Postmark of Delivering Office
Loganville, Ga.
Dec. 13, 1957 - 3 P.M.

INSTRUCTIONS. — Show name, address and number of article below. Complete "Instructions To Delivering Employee" on other side, when applicable. Moisten gummed ends and securely attach to back of article. Endorse front of article RETURN RECEIPT REQUESTED.

RETURN TO
NAME OF SENDER
NATIONAL LABOR RELATIONS BOARD

STREET AND NO. OR P. O. BOX
528 PEACHTREE-SEVENTH BUILDING
50 SEVENTH STREET, N. E.
CITY, ZONE, AND STATE
ATLANTA 23, GEORGIA

REGISTERED NO.
435975

CERTIFIED NO.
INSURED NO.

10-CA-3127 Charge 12-12-57 (FEH)
Walton Mfg. Company

INSTRUCTIONS TO DELIVERING EMPLOYEE

( ) Deliver ONLY to addressee (20c additional)
( ) Show address where delivered in item 4 below (31c additional)

RECEIPT

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. Signature or Name of Addressee
   ARTHUR SCHARFF

2. Signature of addressee's agent (Agent should enter addressee's name in item 1 above)

3. Delivery Date
   12-13-57

AMENDED CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3127

Date Filed
January 22, 1958

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
WALTON MANUFACTURING COMPANY

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
LOGANVILLE, GEORGIA

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about December 3, 1957, the Employer discriminated with respect to the hire and tenure of employment of LUCILLE YANCEY to discourage membership in a labor organization.

By the above, and by other acts and conduct, the Employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, NW, Washington, D.C.

Telephone No.
REpublic 7-5353

7. Declaration
I declare that I have read the above charge and that the

statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Representative
(Title, if any)

January 22, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

(Letter and Return Receipt Omitted)

• • • •

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent

unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10 CA-3201

Date Filed
January 22, 1958

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
WALTON MANUFACTURING COMPANY

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
LOGANVILLE, GEORGIA

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.
(List subsections)

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about the dates set opposite their respective names, the Employer discriminated against the employees named below with respect to their hire or tenure of employment to discourage membership in a labor organization:

GRACE McCART	January 10, 1958
PEARL COKER	January 15, 1958

By the above and by other acts and conduct, the Employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, NW, Washington, D. C.

Telephone No.
REpublic 7-5353

7. Declaration
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Representative
(Title, if any)

January 22, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3202

Date Filed
January 22, 1958

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
LOGANVILLE PANTS COMPANY, and
WALTON MANUFACTURING COMPANY

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
LOGANVILLE, GEORGIA

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about January 17, 1958, the Employer discriminated with respect to the hire or tenure of employment of RUTH BROOKS to discourage membership in a labor organization.

By the above, and by other acts and conduct, the Employer interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL 5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor and Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, NW, Washington, D. C.

Telephone No.
REpublic 7-5353

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
(Signature of representative or person filing charge)
Garvin Biggs
Representative
(Title, if any)

January 22, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3219

Date Filed
2-4-58

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
Walton Manufacturing Company

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
Loganville, Georgia

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about the dates set opposite their respective names the employer discriminated against the employees named below with respect to their hire or tenure of employment to discourage membership in a labor organization:

Bonnie Hamilton	1-31-58
Pauline McGee	1-31-58
Violet Ewing	1-31-58
Ida Harper	1-31-58
Francis E. Johnson	1-31-58
Nellie Ruth Hood	1-31-58
Evelyn Hudson	1-31-58
Nellie R. Wood	1-31-58

By the above and other acts and conduct the employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
   Amalgamated Clothing Workers of America, AFL-CIO

4. Address (Street and number, city, zone, and State)
   15 Union Square, New York 3, New York

Telephone No.
AL-5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
   American Federation of Labor-Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
   718 Jackson Place, N. W., Washington, D. C.

Telephone No.
RE-7-5353

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
(Signature of representative or person filing charge)
Garvin Biggs
Representative
(Title, if any)

February 4, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

CHARGE AGAINST EMPLOYER

United States of America
National Labor Relations Board

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
10-CA-3218

Date Filed
2-4-58

Compliance Status Checked By:
EFW

1. Employer Against Whom Charge Is Brought
Name of Employer
Loganville Pants Company and
Walton Manufacturing Company

Number of Workers Employed
Approximately 165

Address of Establishment (Street and number, city, zone, and State)
Loganville, Georgia

Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

Identify principal product or service
Clothing

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor
(List subsections)
Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about January 24, 1958 the employer discriminated with respect to the hire or tenure of employment of Mrs. Lela Beaver to discourage membership in a labor organization.

By the above and other acts and conduct the employer has interfered with, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number)
Amalgamated Clothing Workers of America, AFL-CIO

4. Address (Street and number, city, zone, and State)
15 Union Square, New York 3, New York

Telephone No.
AL-5-7800

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
American Federation of Labor-Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)
718 Jackson Place, N. W., Washington, D. C.

Telephone No.
RE-7-5353

7. Declaration
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

(Signed) By GARVIN BIGGS
Garvin Biggs
(Signature of representative or person filing charge)
Representative
(Title, if any)

February 4, 1958
(Date)

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

* * * *

(Letter and Return Receipt Omitted)

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

(Number and Title Omitted)

It having been charged by Amalgamated Clothing Workers of America, AFL-CIO, herein called the Union, that Walton Manufacturing Company, herein called Respondent Walton, and Loganville Pants Company, herein called Respondent Loganville, (hereinafter jointly referred to as the Respondents) have been engaged in and are engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, and it being deemed necessary to consolidate said cases in order to effectuate the purposes of the Act and to avoid excessive costs and delay;

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 7, that these cases be, and they are hereby, consolidated.

Upon said charges the General Counsel of the National Labor Relations Board (herein called the Board) on behalf of the Board, by the undersigned Regional Director issues this Order Consolidating Cases, Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Sections 102.15 and 102.33 of the Board's Rules and Regulations, Series 7.

1.

(a) A copy of the charge in Case 10-CA-3127, filed on December 11, 1957, was served upon Respondent Walton on December 13, 1957. A copy of an amended charge in Case 10-CA-3127, filed on January 22, 1958, was served upon Respondent Walton on January 23, 1958.

(b) A copy of the charge in Case 10-CA-3201, filed on January 22, 1958, was served on Respondent Walton on January 23, 1958.

(c) A copy of the charge in Case 10-CA-3202, filed on January 22, 1958, was served upon the Respondents on January 24, 1958.

(d) A copy of the charge in Case 10-CA-3218, filed on February 4, 1958, was served on the Respondents on February 5, 1958.

(e) A copy of the charge in Case 10-CA-3219, filed on February 4, 1958, was served on Respondent Walton on February 6, 1958.

2.

The Respondents are Georgia Corporations, engaged in the manufacture of men's clothing, and at all times material herein have maintained their principal places of business at Loganville, Georgia. The operations of the Respondents, and their labor relations policies, are so interrelated and integrated as to constitute them a single employer for the purposes of this proceeding.

3.

The Respondents, during the past twelve months, which period is representative of all times material herein, sold and shipped products valued at more than $50,000 directly to places located outside the State of Georgia.

4.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

5.

Respondent Walton, by its supervisor and agent, Forelady Grace Higgins on or about January 10, 1958, threatened to close its plant if the Union became the representative of its employees.

6.

Respondent Walton, by its supervisor and agent, Foreman Gerald Carter, on or about November 25, 1957, and January

27, 1958. interrogated its employees concerning their Union membership, activities, and desires.

7.

Respondent Walton, by its supervisor and agent, Forelady Myrtle Ewing, on or about November 29, 1957, and December 30, 1957, threatened its employees with discharge if they joined or retained membership in or engaged in activities on behalf of the Union.

8.

Respondent Loganville, by its supervisor and agent, Forelady Edna Atha, on or about December 4 and 14, 1957, and January 10, 1958, interrogated its employees concerning their Union membership, activities and desires and the Union membership, activities and desires of other employees.

9.

Respondent Loganville, by its following named supervisors and agents, on or about the dates set opposite their respective names, threatened its employees with discharge if they joined or retained membership in, or engaged in activities on behalf of, the Union:

Forelady Edna Atha	December 4, 1957
Plant Superintendent S. G. Hughley	January 10, 1958

10.

Respondent Loganville, by its supervisor and agent, Plant Superintendent S. G. Hughley, on or about January 8, 1958, promulgated a rule prohibiting employees from talking about the Union in its plant at all times.

11.

Respondent Loganville, by its supervisor and agent, Plant Superintendent S. G. Hughley, on or about January 8, 1958, threatened its employees that it would cease attempting to procure orders for its products if said employees persisted in talking about the Union.

12.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 3 and 10, 1957, and January 15 and 30, 1958, threatened to close their plants if the Union became the representative of their employees.

13.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 5, 1957, and January 14, 27 and 30, 1958, interrogated their employees concerning their Union membership, activities and desires and the Union membership, activities and desires of other employees or of relatives of the employees.

14.

The Respondents, by their supervisor and agent, Morris Scharff, on or about November 30, 1957, engaged in surveillance of Union activities among their employees by recording the license numbers of automobiles operated by representatives of the Union.

15.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 14, 1958, informed their employees that they had a list of all their employees who attended a Union meeting, and thereby caused their employees to believe that the Respondents had engaged in surveillance of said employees' Union activities.

16.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 14, 1958, threatened their employees with discharge if they joined or retained membership in or engaged in activities on behalf of the Union.

17.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 14, 1958, threatened their employees that it would be difficult for said employees who joined or retained membership in the Union, or engaged in activities on behalf of the Union, to secure other employment.

18.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 3, and December 10, 1957, threatened their employees that they would eliminate and discontinue their policy of lending money to their employees if the Union became the representative of said employees.

19.

The Respondents, by their supervisor and agent, Morris Scharff, on or about December 5, 1957, promised a laid-off employee that she would be given a job if the Union did not become the representative of their employees.

20.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 27, 1958, informed their employees that employment opportunities for prospective employees were conditioned upon whether or not the Union became the representative of their employees.

21.

The Respondents, by their supervisor and agent, Morris Scharff, on or about January 28, 1958, induced and encouraged their employees to withdraw from and renounce the Union, and assisted them therein.

22.

The Respondents, by their agent, J. B. Stevens, on or about November 30, 1957, engaged in surveillance of Union activities among their employees.

23.

On or about the dates set opposite their respective names, Respondent Walton discharged and thereafter failed and refused to reinstate the following-named employees:

Lucille Yancey	December 4, 1957
Pearl Coker	January 15, 1958
Bonnie Hamilton	January 31, 1958
Pauline McGee	January 31, 1958
Violet Ewing	January 31, 1958
Ida Harper	January 31, 1958
Frances Elizabeth Johnson	January 31, 1958
Nellie Hood	January 31, 1958
Nellie Wood	January 31, 1958
Evelyn Hudson	January 31, 1958

24.

On or about January 10, 1958, Respondent Walton discharged its employee, Grace McCart, and failed and refused to reinstate said McCart unit on or about March 3, 1958.

25.

Respondent Walton discharged and thereafter failed and refused to reinstate its employees as described in paragraphs

23 and 24 above because of their membership in and activities on behalf of the Union, because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in the Union.

26.

On or about the dates set opposite their respective names, Respondent Loganville discharged and thereafter failed and refused to reinstate its following-named employees:

Ruth Brooks	January 16, 1958
Lela Beaver	January 27, 1958

27.

Respondent Loganville discharged and thereafter failed and refused to reinstate its employees, as described in paragraph 26 above, because of their membership in and activities on behalf of the Union, because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in the Union.

28.

The acts of Respondent Walton described in paragraphs 23, 24 and 25 above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the Act.

29.

The acts of Respondent Walton described in paragraphs 5, 6 and 7 above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

30.

The acts of Respondent Loganville described in paragraphs 26 and 27 above constitutes unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the Act.

31.

The acts of Respondent Loganville described in paragraphs 8, 9, 10 and 11 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

32.

The acts of the Respondents described in paragraphs 12 through 22 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 11th day of August, 1958, at ten o'clock a.m. (EST) at Walton County Courthouse, Monroe, Georgia, a hearing will be conducted before a duly designated trial examiner of the National Labor Relations Board on the allegations set forth in the above Com-

plaint, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless they do so all of the allegations in the Compiaint shall be deemed to be admitted to be true and may be so found by the Board.

Issued at Atlanta, Georgia, this 25th day of July, 1958.

(Signed) WALTER C. PHILLIPS
Walter C. Phillips,
Regional Director
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

(SEAL)

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Walton Manufacturing Company
and
Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219
Amalgamated Clothing Workers of America, AFL-CIO

— — —

Loganville Pants Company and Walton Manufacturing Company
and
Case Nos. 10-CA-3202, 10-CA-3218
Amalgamated Clothing Workers of America, AFL-CIO

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from August 11, 1958, to September 15, 1958, without change as to the hour and place of the hearing.

DATED at Atlanta, Georgia, this 30th day of July, 1958.

(Signed) WALTER C. PHILLIPS
Walter C. Phillips,
Regional Director,
National Labor Relations Board,
Atlanta, Georgia

(SEAL)

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Walton Manufacturing Company
and
Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219
Amalgamated Clothing Workers of America, AFL-CIO

— — —

Loganville Pants Company and Walton Manufacturing Company
and
Case Nos. 10-CA-3203, 10-CA-3218
Amalgamated Clothing Workers of America, AFL-CIO

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from September 15, 1958, to October 14, 1958, without change as to the hour and place of the hearing.

DATED at Atlanta, Georgia, this 5th day of September, 1958.

(Signed) WALTER C. PHILLIPS
Walter C. Phillips,
Regional Director,
National Labor Relations Board.
Atlanta, Georgia

(SEAL)

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Walton Manufacturing Company
and
Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219
Amalgamated Clothing Workers of America, AFL-CIO

— — —

Loganville Pants Company and Walton Manufacturing Company
and
Case Nos. 10-CA-3202, 10-CA-3218
Amalgamated Clothing Workers of America, AFL-CIO

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from October 14, 1958, to October 15, 1958, without change as to the place and the hour of the hearing.

DATED at Atlanta, Georgia, this 7th day of October, 1958.

(Signed) FRANK E. HAMILTON, JR.
Frank E. Hamilton, Jr.
Acting Regional Director,
National Labor Relations Board,
Atlanta, Georgia

(SEAL)

ANSWER OF RESPONDENTS

(Number and Title Omitted)

Complaint having been issued on July 25, 1958, in the above-styled matters, the Respondents named therein, WALTON MANUFACTURING COMPANY and LOGANVILLE PANTS COMPANY, file their Answer thereto as follows:

1.

Paragraph 1 of the Complaint is admitted.

2.

Answering paragraph 2 of the Complaint, it is admitted that Respondents are Georgia corporations, and that at various times they have been engaged in the manufacture of men's clothing, and that they have maintained their principal places of business in Loganville, Georgia. Respondent Loganville Pants Company has been inactive as a production plant since January 31, 1958. The Respondents deny that their operations, and their labor relations policies, are, or have at any time been, so interrelated and integrated as to constitute them a single employer for the purposes of this or any other proceeding.

3.

Respondent Walton admits paragraph 3 of the Complaint. Respondent Loganville denies paragraph 3 of the Complaint.

4.

Paragraph 4 of the Complaint is denied. Respondents state that the primary and sole purpose for which this union exists is to destroy the business of Respondents, and not to function as a labor organization within the meaning of Section 2(5) of the Act.

5.

Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the Complaint are denied.

6.

Answering paragraph 23 of the Complaint, Respondent Walton admits that the employees named therein were terminated on or about the dates set beside their names due to a cut-back in productions. Respondent Walton denies it has "failed and refused" to reinstate said employees.

7.

Answering paragraph 24 of the Complaint, Respondent Walton admits that Grace McCart was laid-off on January 10, 1958, and that she was reemployed on March 3, 1958, but denies that it "failed and refused to reinstate" her as alleged.

8.

Paragraph 25 of the Complaint is denied.

9.

Answering paragraph 26 of the Complaint, Respondent Loganville admits that the employees named therein were terminated on or about the date set beside their names but denies that it "failed and refused to reinstate" them as alleged.

10.

Paragraphs 27, 28, 29, 30, 31, and 32 of the Complaint are denied.

WHEREFORE, having answered the said Complaint in its entirety, Respondents pray that same be dismissed.

This the 4th day of August, 1958.

WILSON, BRANCH and BARWICK
(Signed) ALEXANDER E. WILSON, JR.
Alexander E. Wilson, Jr.
Attorneys for Respondents,
WALTON MANUFACTURING
COMPANY AND LOGANVILLE
PANTS COMPANY

615 Rhodes-Haverty Bldg.
Atlanta 3, Georgia.

CERTIFICATE

This is to certify that I, ALEXANDER E. WILSON, JR., have read the foregoing Answer of Respondents; that to the best of my knowledge, information and belief there is good ground to support it; and that same is not interposed for delay.

This the 4th day of August, 1958.

(Signed) ALEXANDER E. WILSON, JR.
Alexander E. Wilson, Jr.
Attorney of Record.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer of Respondents has been served by depositing same in the United States Mails, postage prepaid, on the following persons:

1. Amalgamated Clothing Workers of America,
   AFL-CIO
   Post Office Box 51
   Winder, Georgia

2. Miss Gladys Dickason, Vice President
   Amalgamated Clothing Workers
   15 Union Square
   New York 3, New York

3. Mr. William Isaacson
15 Union Square
New York 3, New York

This the 4th day of August, 1958.

(Signed) ALEXANDER E. WILSON, JR.
Alexander E. Wilson, Jr.

IR-604
Monroe, Ga.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

(Number and Title Omitted)

Statement of the Case

Upon charges filed against Respondent Walton Manufacturing Company (herein sometimes called Walton), and Respondent Loganville Pants Company (herein sometimes called Loganville Pants), by Amalgamated Clothing Workers of America, AFL-CIO (herein called the Union), the General Counsel of the National Labor Relations Board issued his consolidated complaint dated July 25, 1958, alleging that Respondents have engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended (61 Stat. 136, herein called the Act). In substance the consolidated complaint, as amended at the

hearing,[1] alleges that Respondents, although two separate corporations, are so interrelated and integrated by reason of their common ownership, operation, control and labor relations policies, as to constitute a single employer for the purposes of this proceeding. The complaint further alleges that Respondents violated Section 8 (a) (1) of the Act by interrogation of employees concerning their "union affiliation, activities and desires," by engaging in surveillance of the activities of the Union's organizers, by causing employees to believe that Respondents had engaged in surveillance by threatening employees with discharge for joining or engaging in activities on behalf of the Union, by promulgating a rule against talking about the Union in the plant, not limited to working hours, by threatening to cease attempting to procure business and to close their plants if the Union became the representatives of their employees, by inducing and encouraging employees to withdraw from the Union, and by conditioning employment for a prospective employee and reemployment for a discharged employee upon the Union not becoming the representative of their employees. The complaint further alleges that Respondents violated Section 8 (a) (3) and (1) of the Act by discharging 13 employees on various dates from December 4, 1957, to January 31, 1958, because of their membership in or activities on behalf of the Union, and by refusing to reinstate the said discharged employees. In substance, Respondents' answer denies the integration and interrelation of the two companies, denies the commission of unfair labor practices,

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[1]At the conclusion of the General Counsel's case, the consolidated complaint was amended by consent by deleting line 6 from paragraph 9, thus eliminating therefrom the words "Forelady Edna Atha — December 4, 1957"; by deleting from paragraph 12, the words "15 and" following "January" on line 2; and by striking *in toto*, paragraph 18.

admits the termination of the employees named in the complaint, denies that Respondents refused to reinstate them, and alleges that the terminations of said employees were due to a cut back in production.

Pursuant to notice, a hearing was held before me in Monroe, Georgia, on October 15, 16, 17, 20, 21, 22 and 23, 1958. All parties were represented at the hearing by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues.

At the opening of the hearing, Respondents moved to sever the cases and for a separate hearing as to each Respondent on the ground that they were "entirely separate organizations . . . merely doing business with one another." I denied the motion. At the conclusion of the General Counsel's case, Respondents moved to dismiss various paragraphs of the consolidated complaint on the ground that the proof had failed to sustain the allegations and/or that the allegation failed to set forth a violation of the act. Decision was reserved on said motions. They are disposed of in accordance with the findings and conclusions herein.[2]

At the close of the hearing, the General Counsel moved to conform the pleadings (i. e., the complaint) to the proof in respect to minor discrepancies such as dates, names and similar matters. The motion was granted by consent.

On January 19, 1959, the General Counsel and the Respondents filed their respective briefs.

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[2]In his brief (p. 3), the General Counsel consents to the dismissal of paragraph 17 of the complaint. It is accordingly stricken.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Commerce

Respondent Walton, a Georgia corporation, is engaged in the manufacture and sale of men's and boys' clothes. At the times material herein, the coat portion of the suits was made in Walton's plant in Loganville, Georgia, and the pants portion was made by Respondent Loganville Pants at a plant in Loganville, Georgia, approximately 2/3 of a mile from Walton's plant. After fabrication, the pants were shipped by Loganville Pants to Walton where they were pressed, trimmed, examined and finished and then shipped, together with Walton's coats, as suits to the latter's customers. The complaint alleges and the answer admits that during the past 12 months, a representative period, Walton shipped finished products valued at more than $50,000 directly to places outside the State of Georgia. The answer denies commerce as to Loganville Pants. At the opening of the hearing, the parties stipulated that during the period between September 17, 1957, and January 31, 1958,[3] Loganville Pants sold products to Walton valued at $14,382.47. Since on the record herein, Walton and Loganville Pants constitute a single, integrated employer for the purposes of this proceeding, I find that both Respondents are engaged in interstate commerce

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[3]On this date, Loganville Pants' machinery, equipment and employees were physically transferred to Walton's Plant, the pants portion of the suits was thereafter manufactured by Walton, and Loganville Pants allegedly went out of business.

and that it will effectuate the policies of the Act to assert jurisdiction herein.[4]

II. The labor organization involved

The uncontradicted evidence discloses that Amalgamated Clothing Workers of America, AFL-CIO, is an organization in which employees participate, which exists for the purpose of dealing with employers concerning rates of pay, hours of employment and other conditions of employment. Accordingly, I find that the Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. The alleged unfair labor practices

A. *The interrelation between Respondents Walton and Loganville Pants*

Walton commenced operations at its plant in Loganville, Georgia, in June, 1957. Its principal officers, directors and stockholders are Harry Scharff and Arthur Scharff, the former's son. Loganville Pants commenced operations in September, 1957. Its principal officers, directors and stockholders, were Harry and Arthur Scharff, and Morris Rubel, a nephew of Harry and cousin of Arthur.

Because of Respondents' denial that the two companies constituted a single, integrated employer within the meaning of the Act, considerable testimony was adduced during the hearing on that issue. The record discloses that em-

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[4] *Venus Die Engineering Company*, 110 NLRB 336; *A. M. Andrews Company of Oregon*, 112 NLRB 626, enf'd. 236 F. 2d 44 (C. A. 9).

ployees and supervisors were frequently transferred between the two companies; that the books and records of Loganville Pants were maintained at Walton's plant by the latter's office employees; that the cutting of cloth for both companies was done by Walton's employees at the latter's plant; that Walton's maintenance mechanics also repaired the machinery and equipment of Loganville Pants; that a Christmas party for employees of both companies was held at Walton's plant, at which all the employees of both were given the present of a ham; that a joint letter was sent by Harry Scharff to the employees of both companies in connection with the Union's organizing campaign, expressing the hope that the employees of both companies would soon be able to work in the same plant; and that, as aforestated, all the pants produced by Loganville Pants were sold to Walton where they were pressed and finished by the latter's employees and then sold, together with Walton's coats, as Walton's suits to the latter's customers. On this record, there is no doubt and I find that these two commonly owned enterprises constituted a single, straightline, integrated employer within the meaning of the Act and the Board's decisions interpreting it.[5]

B. The agency status of Morris Scharff in respect to Respondents

Much of the conduct alleged as unfair labor practices on the part of Respondents is attributed to Morris Scharff, des-

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[5] See cases in fn. 4; also, *Irwin Lyons Lumber Company*, 87 NLRB 54.

On the last day of the 7-day hearing herein, Respondents conceded that Walton and Loganville Pants are one employer for the purposes of this proceeding. On the record already made, Respondents' belated stipulation was superfluous.

ignated in the complaint as Respondents' "supervisor and agent." Throughout the hearing and until the very last day thereof, when Morris Scharff was called to testify, Respondent's able counsel maintained that Morris Scharff was neither an official nor an agent of either Respondent. Although Respondents ultimately stipulated that for the purposes of this proceeding only, Morris Scharff was their agent within the meaning of the Act, I shall, nevertheless, summarize the testimony regarding Morris Scharff's authority to act on Respondents' behalf, because I regard it as important to a proper evaluation of the impact of his statements and conduct on Respondents' employees.

The record discloses that for many years, Morris had been engaged in the business of manufacturing men's and boys' clothing with his father, Harry, and brother Arthur, and, just prior to the initiation of Walton's business, the three of them had jointly owned such a business in New York City, under the corporate name of Southeastern Clothing Corp. (herein called Southeastern). When Walton commenced business, it sold the same type of clothes to the same customers as Southeastern had done. In April 1957, before Walton commenced operations, Morris moved his home from New York City to Atlanta, Georgia, within commuting distance from Respondents' plants. Until November 1957, Southeastern continued in business in New York City, with Morris Scharff as its then alleged sole owner. Sometime during the period between May and November 1957, while Morris was allegedly sole owner thereof, Southeastern performed work for Walton on a contract basis. Southeastern's machinery was physically transferred to Respondents on an undisclosed date in 1957. Morris Scharff had a private office at Walton's plant for which he paid no rent. Except for brief

periods when he was ill or out of the city, Morris was at the Walton plant daily during the usual working hours of the day. Morris was consulted by Arthur Scharff regarding the hiring of Mr. Hughley, the first plant superintendent of Walton, and I. S. Prosterman who succeeded Hughley in September 1957 when the latter was transferred to Loganville Pants as superintendent. Morris Scharff interviewed and hired many of the employees of Walton. He examined, praised and criticized the work of Walton's employees at Walton's plant. He gave raises to some of the employees. Employees who were discharged or laid off by Walton and Loganville Pants discussed their terminations with Morris. He made speeches in Respondents' plants to counteract the Union's organizing campaign. He wrote letters to Respondents' counsel in connection with the charges in this case. He was consulted regarding which persons were to be laid off and/or discharged. He acted as Respondents' representative throughout the hearing herein and consulted with Respondents' counsel. He was the person most familiar with all phases of Respondents' operations. Before Respondents' stipulation that he, Morris Scharff, was their agent, Arthur Scharff had testified that Morris was merely an unpaid advisor with whom he consulted only as a brother and that Morris had no official connection with Respondents. Other supervisors of Respondents similarly testified that Morris was merely a consultant. After Respondents stipulated that he was their agent for the purpose of this proceeding, Morris Scharff admitted that he supervised, handled personnel matters and set personnel policy for Walton's coat shop and made the decisions for Loganville Pants.

On the record, it is clear and I find, not only that Morris was an agent of Respondents within the meaning of the Act,

but that he was their principal operating official in charge of personnel, office and production, and was so regarded by Respondents' employees.[6]

C. *The alleged interference, restraint and coercion*

In November 1957, the Union sent a team of five organizers to organize Respondent's employees. The Union's campaign, which started about November 18, initially concentrated on visiting the homes of Respondents' employees to sign them up. Respondents promptly took measures to defeat the Union's organizational efforts. In the last week of November 1957, Respondents sent a letter to all their employees which set forth the benefits of employment with Respondents, announced new benefits, paid vacations and holidays, and stated that Respondents were also considering a pension plan for their employees (G. C. Exh. 7). The letter concluded with the statement, "no employee has to pay dues or initiation fees to any outside union — [or] outsiders for the privilege of working here."[7]

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[6] E. g., Loganville Pants employee Bessie Satterfield who testified *inter alia*, regarding her reason for withdrawing from the Union, said: "Because I felt like it wasn't right for us to — *Morris gave us the job* . . . for us to *work for him* and then to be pulling for the Union." Similarly Walton employee Nellie R. Wood testified, ". . . I was afraid I might have to *work for Morris again* some day. . . . Well, I felt that they (the Union) was doing *him* (Morris Scharff) dirty." (Emphasis added.)

[7] The complaint does not allege the announcement of the additional benefits, to defeat the Union's organizational efforts, as a violation of the Act, and I therefore, will make no findings based thereon.

a. *Surveillance*

On the morning of Saturday, November 30, 1957, between 8 a. m. and 9 a. m., Union Organizer Sarah Broom, while engaged in visiting by automobile the homes of Respondents' employees to solicit their support of the Union, was followed by Walton employee J. B. Stephens, driving in a 1957 green Plymouth car owned by Morris Scharff. Stephens, a brother of Supervisor Grace Higgins, performs maintenance and janitorial work. Organizer Broom observed that when she stopped at her first call, the home of one of Respondents' employees, the Plymouth stopped a short distance away, and that when she came out and proceeded to a second employee's home, she was followed by the same Plymouth car, about three car lengths behind her. When Broom arrived at the second employee's home, the Plymouth car also stopped a short distance from the employee's home. After leaving the second employee's home, enroute to a third employee's home, Mrs. Broom did not see Stephens or the car. However, a few minutes after she left the third employee's home and joined the other organizers at the Breeze Inn Restaurant near Walton's plant, Stephens drove up in the green Plymouth accompanied by Morris Scharff and Plant Superintendent Prosterman. The three of them got out of the Plymouth, entered the restaurant, ate and finished their lunch, and walked outside leaving the union organizers still inside. Stephens then pointed out to Morris Scharff the three cars of the union organizers and Morris wrote down the license numbers. Then Morris Scharff, Prosterman and Stephens drove away in the green Plymouth. When the organizers left the restaurant, they had some difficulty with one of their cars, not attributable to Respondents, and while working on it, they again ob-

served Stephens, parked and alone in the green Plymouth, watching them. That afternoon, Mrs. Broom's car was again followed by Stephens in the green Plymouth to her first call at an employee's home, but when she stopped, the Plymouth car continued on. After that, Mrs. Broom did not observe the Plymouth car or Stephens while she made two additional calls at employee's homes, but about 3 or 3:30 p. m., Stephens again drove into Breeze Inn about 5 minutes after Mrs. Broom arrived there.

Morris Scharff admitted taking down the license numbers of the organizers' cars. He testified that he did so because he was concerned with the possibility of union violence. He further testified that he went to the Breeze Inn "out of curiosity" after Stephens had come to the plant and told him that the organizers were there. Morris Scharff denied that he had authorized Stephens to follow any organizer, denied that Stephens had reported to him that he had done so, and denied that Stephens had reported the names of employees whom the organizers had visited. His explanation for Stephens' use of his Plymouth car was that the car was at the disposal of anyone who wanted to use it. Stephens was not called by Respondents to testify regarding his reasons for following Mrs. Broom's car, and no explanation for his failure to testify was offered.

On this record, I am convinced that, notwithstanding the lack of direct evidence that Stephens was following Organizer Broom's car pursuant to Respondents' instructions, the circumstantial evidence warrants the conclusion that he did so on Respondents' behest, and I so find. I base this finding and conclusion on the following circumstances: (1) Stephens' day long use of Morris Scharff's car to follow Organizer

Broom; (2) Stephens' report to Morris Scharff at the plant at midday (after his morning surveillance of Organizer Broom) that the organizers were at Breeze Inn; (3) Morris Scharff's visit to the restaurant accompanied by Stephens, allegedly to see the organizers; (4) Morris Scharff's evident interest in the license numbers of all the organizers' cars, shown by his notation of their license numbers and by the fact that the organizers' cars were pointed out to Scharff by Stephens; (5) Stephens' continued observation of the organizers at the restaurant and his following Organizer Broom in Morris Scharff's car directly after Scharff's visit to the restaurant; (6) Respondents' failure to call Stephens to testify and the absence of any explanation therefor; (7) the lack of any rational reason why Stephens, a janitor, would be so interested personally in the activities of the union organizers that he would spend practically an entire day in following one of them and in observing them; and (8) the admitted hostility of Respondents and Morris Scharff to the Union's organizational efforts.* I therefore find and conclude that by the aforedescribed conduct, Respondents engaged in surveillance of the activities of the union organizers, and thereby interfered with, restrained and coerced their employees in the exercise of their rights

*Accordingly, I do not credit Scharff's inadequate explanations for Stephens' use of his car throughout the day, for his visit to Breeze Inn and for noting the license numbers of the organizers' cars, and I do not credit his denial that he authorized Stephens to follow the organizers.

to engage in concerted activity, in violation of Section 8 (a) (1) of the Act.[9]

b. Morris Scharff's antiunion speeches

On December 3, 1957, 3 days after the Breeze Inn restaurant incident related above, Respondent Walton assembled its employees in the plant during working hours and, in the presence of his father and brother, Morris Scharff made an antiunion speech to all of Walton's employees.[10] Later that day, the same procedure was repeated at the Loganville Pants plant, where Morris repeated the antiunion speech in the presence of his brother Arthur, Loganville Pants' treasurer, and Mr. Hughley, the plant superintendent. One week later, on December 10, 1957, Morris Scharff made a second antiunion speech on company time to the employees at the Walton plant, and later that same day, made a similar speech to the Loganville Pants' employees. The testimony regarding what was said by Morris in these speeches varied in accordance with the recollections of the General Counsel's witnesses. Some remembered that Morris, in substance, said that the plant would close down if the Union came in, others remembered that Morris said that he wanted no part of the Union and would leave if the Union

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[9] Organizer Eiger testified that employees of Respondents were at the restaurant at the time Morris Scharff took down the license numbers. He was not corroborated in that testimony by the other organizers who testified concerning this incident and I do not credit his testimony in this respect. However, the fact that no employees were at the Breeze Inn to observe Scharff take down the license numbers of the organizers' cars and none observed the following of Broom's car by Stephens, is immaterial and does not detract from the violation. *E-Z Mills, Inc.*, 101 NLRB 979 980.

[10] The employees were paid for the time thus consumed.

came in, and others recalled that he said, *inter alia*, that if the employees wanted to forget that they had signed for the Union, he was willing to forget it too. This variance in their recollection is not surprising in view of the length of the speeches.[11] According to Morris Scharff, he made the four speeches from notes, simultaneously recording the speeches by dictaphone. I received in evidence (Respondents' Exh.'s 89 and 90) transcriptions of the speeches made at the Walton plant which were typed by a Walton office employee after the speeches were made.[12] From a comparison of the transcriptions with the testimony of the witnesses, I am satisfied that the transcriptions are substantially accurate reproductions of what was said, notwithstanding the absence of the tapes and the mechanical possibility that portions of what was said might have been omitted from the tapes and/or the transcriptions.[13]

In his first speech, Morris Scharff stated in substance that he had no official connection with Walton because of a contract with the Union in New York City, and that he was helping his father and brother until his union contract terminated when he would become a partner in the business. He stated that he had been fighting the Union in New York

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[11]Transcribed, the December 3 speech at Walton consists of 7½ pages of single-spaced typewritten copy, and the December 10 speech, 3 pages of similar copy.

[12]According to Morris Scharff, the speeches at the Loganville Pants plant were not transcribed and the tapes of none of the speeches could be located. However, Morris testified that his speeches to the Loganville Pants' employees were substantially the same as those he made to the Walton plant employees.

[13]Accordingly, insofar as the recollection of the General Counsel's witnesses differ from the transcriptions, I am accepting the transcriptions' version. That is not to say that I regard Morris Scharff as a truthful witness, but merely that I believe that the transcriptions are substantially accurate and more reliable than the witnesses' recollection of what was said.

and that the Union's real purpose in attempting to organize the plant was to have Walton's work transferred back to New York City for performance by New York employees, something which he (Morris Scharff) would not permit to happen.[14] The speech then continued with a harangue against the Union, including an appeal to sectional prejudices based on the northern origin of the Union and an appeal to class prejudice based on the "millions of dollars" accumulated by the Union through dues, initiation fees and assessments which "comes out of the pockets of the worker who is trying to put bread and milk on table." In concluding, Morris Scharff stated:

> . . . remember, I have no association with this Company, officially. I hope to have in the near future, but if you want a Union shop, you are going to have it without me, because I have had my stomach full of Unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it.

After careful study of the two transcriptions, I am convinced that with the exception of the above quote, the statements made by Morris Scharff in his antiunion speeches are protected free speech within the meaning of Section 8 (c) of the Act. However, I do not so regard the

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[14]This statement is, of course, completely inconsistent with Morris Scharff's previously stated lack of official connection with Walton. Indeed, the speech is replete with references showing Morris' supervision of the plant and the knowledge thereof by Respondents' employees; e. g., the reference to the request made to Morris by employees for permission to wear slacks, shorts or low cut dresses during the summer; his illustration that if the employees' and his positions were reversed and the employees were "my foreman and my boss"; and his control of the terms of repayment of loans made by Respondents to employees.

statements in the portion of the speech quoted above, in which Morris Scharff threatened not to associate with Respondents if the Union came in. When viewed in context, that statement conveyed a threat to the economic security of Respondents' employees if the Union became their representative. I base this conclusion on the fact that the threat not to associate with Respondents came from the person who, as found above, was the principal official of Respondents in the operation of the plants, was closely related both by blood and in actual management with the record owners of the business, and was regarded by Respondents' employees as their boss; and on the further fact that the statement was made at a forum and to a paid employee audience supplied by Respondents. In that context, Respondents' employees could, as many of them apparently did, reasonably interpret that statement as the equivalent of a threat to shut down the plant rather than deal with the Union. *McCann Steel Co.*, 106 NLRB 41, 59.[15] The Board has frequently held that a threat to shut down or remove a plant to discourage or prevent unionization violates Section 8 (a) (1) of the Act. *Drummond Implement Company*, 102 NLRB 596, 598; *Richards and Associates*, 110 NLRB 132, 138-140. Moreover, even if Scharff's statement quoted above, is not regarded as the equivalent of a threat to close the plant, but merely that he (Morris Scharff) would no longer be associated with the business if the Union came in, the statement, coming as it did from Respondents' principal operating official, constituted a threat to the economic security of Respondents' employees and violated Section 8 (a) (1) of the

[15]Some of the General Counsel's witnesses testified that Morris, in his speech, threatened to close down the plant if the Union came in. In my opinion, their testimony was the witnesses' interpretation of Morris' remarks quoted above.

Act. *McCann Steel Co., supra; Audubon Cabinet Company, Inc.*, 117 NLRB 861, 863.

c. Interrogation of employees by Morris Scharff

In furtherance of its organizational campaign, the Union held three meetings of Respondents' employees at the Rosebud Community House on December 3, and 12, 1957, and on January 9, 1958. Walton employee Grace McCart, one of the discriminatees alleged in the complaint, attended the January 9 meeting, and was discharged the following day by Plant Superintendent Prosterman. On January 14, 1958, following her discharge by Walton, Grace McCart visited Morris Scharff to inquire concerning the cause of her discharge and told Morris she believed it was because she had signed a card for the Union. Morris then asked her if she had gone to a union meeting the previous Thursday, January 9 (the night before her discharge) and McCart replied "yes." Morris then asked who was at the meeting, but McCart refused to tell. Instead, she told Morris she went to the meeting because she had been asked to do so by a fellow employee who had stopped by McCart's house before the meeting Scharff asked for the name of the girl, but McCart would not divulge it. He asked her if it was the girl who sews in the tape or if it was Anne Clark, but McCart said, "no." Scharff then stated that he knew everyone who attended the meeting, anyway, and that the most active proponents of the Union were Ruth Brooks, Pearl Coker and Jeanette Beaver. Morris Scharff admitted that he had inquired of Grace McCart whether she had attended the union meeting and that he had also inquired whether Jeanette Beaver, Pearl Coker and Ruth Brooks had attended. Scharff testi-

fied that his reason for inquiring whether Grace McCart had attended the union meeting was to "reassure" her that she was not being discharged because of the Union, and that his reason for inquiring about the others was that it was common knowledge about the town that these girls "were very heavily pro-union, and active in the organization attempt."

I do not credit Morris' explanations for his interrogation of Grace McCart. It is, in my opinion, beyond comprehension how such an inquiry could reassure Grace McCart that she had not been discriminatorily discharged because of her attendance at the union meeting. Indeed, the admitted inquiry tends to confirm McCart's belief that her discharge was motivated by her attendance at the union meeting. Moreover, on the entire record, I do not regard Morris Scharff as a truthful or reliable witness.[16] I therefore conclude:

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[16]My lack of regard for the veracity of Morris Scharff as a witness is based on, *inter alia*: (1) his testimony that on the date of the discharge of Pearl Coker (January 15, 1958), he did not know whether or not she belonged to the Union, when in fact, only the day before he had interrogated Grace McCart regarding Coker's attendance at the January 9 meeting, and in connection therewith, admitted it was common knowledge that Coker was 1 of 3 employees who were "heavily pro-union"; (2) his implausible testimony regarding the use of his car for surveillance of union organizers and for taking down the license numbers of their cars; (3) his testimony, which I do not credit, that he had no official connection with Respondents until June 1957, when in fact he moved to Atlanta from New York in April 1957; (4) his speech to employees that he had no official connection with Respondents whereas the record shows that he was their principal operating official; (5) his implausible testimony that operators who never worked on high speed sewing machines are more easily trained than persons who have operated such machines; and (6) his testimony, which I cannot believe, that Respondents' employees asked him after his antiunion speech whether he was for or against the Union.

(1) By stating that he knew who had attended the meeting, Scharff gave Grace McCart the impression that Respondents had engaged in surveillance of the meeting. As the Board said in *F. W. Woolworth Co.*, 101 NLRB 1457, footnote 2, "as such a statement creates the impression that the Employer had engaged in surveillance, it violates Section 8 (a) (1) whether or not he did so."

(2) In the context of Respondents' admitted hostility to the Union and Morris Scharff's antiunion speeches, by Scharff's interrogation of Grace McCart regarding her attendance at the union meeting and the identity of the employee who had solicited her attendance and of others who attended, Respondents engaged in restraint and coercion of employees in the exercise of their rights under the Act. *Blue Flash Express, Inc.*, 109 NLRB 591, 593.[17]

In view of my finding that by the aforementioned interrogation and statements of Morris Scharff, Respondents engaged in unfair labor practices in violation of Section 8 (a) (1) of the Act, I deem it unnecessary to consider or pass upon the additional incidents of interrogation allegedly engaged in by Morris Scharff and by Respondents' Supervisors Gerald Carter, Myrtle Ewing, Grace Higgins and Edna Atha, since no different order would be recommended by me based on such interrogation than that based on the interrogation already found.

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[17]Although Grace McCart was a discharged employee on this occasion, she was, at the least, an applicant for reemployment at the time and, therefore, an employee within the meaning of the Act. *Phelps Dodge Corp.*, 313 U. S. 177.

d. Alleged threats by Supervisors
Grace Higgins and Myrtle Ewing

According to Walton employee Pearl Coker, on the morning of January 10, 1958, she told her supervisor, Grace Higgins, that she had attended a union meeting the night before, and in reply, Higgins told employee Coker that she had been told by the Scharffs at their supervisors' meeting that they [the Scharffs] would close their plant down before they would work union labor. Supervisor Higgins testified that she recalled that Coker told her about attending the union meeting the night before but that Higgins had made no reply. Since I do not regard Grace Higgins as a credible witness and the threat to close down the plant rather than work with union labor is consistent with the implications of Morris Scharff's speech in which he threatened that he would not associate with Respondents if the Union came in, I credit the testimony of Pearl Coker that Higgins made the statement attributed to her by Coker.[18]

Walton employee Pauline McGee testified that just after the Union held its first meeting, two of Walton's employees and McGee were discussing the Union in the plant at lunch time, when Supervisor Myrtle Ewing came by the machine

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[18] I base my conclusion that Higgins testimony is untrustworthy upon the entire record, including: (1) her demeanor as a witness; (2) her testimony that she heard Morris Scharff make a speech in the plant and yet did not know that Morris Scharff was against the Union; (3) her incredible testimony that the speech was primarily "not about the union"; (4) her testimony that she never discussed the Union with her supervisors, which was contradicted by the testimony of both Superintendent Prosterman and Morris Scharff, whom I credit in this respect; and (5) her testimony that she was out sick when Francis Elizabeth Johnson was laid off, but was present when Evelyn Hudson was laid off, both layoffs having occurred on the same day and time.

and said, "If you don't want to dig your own grave, you had better shut up talking about the Union." In addition, Walton employee Violet Ewing, a sister-in-law of Supervisor Myrtle Ewing, testified that about 2 weeks after the union organizers came to town, she had a conversation with Supervisor Myrtle Ewing during which the latter asked whether Violet knew that there were union organizers around and Violet answered that she did and then Supervisor Myrtle Ewing said: "Morris [Scharff] said he didn't care how good an operator a girl was, or who she was, that he would fire her if he found out she had joined the Union." Supervisor Ewing recalled having a conversation about "digging of graves" with employee McGee, but gave this version of it: Pauline McGee was on her way from the water fountain and the bell for resumption of work had either rung or was ringing. She then told McGee that she was digging her own grave by not cooperating and being at her machine at work time. Supervisor Ewing denied that she said anything to McGee about the Union. Referring to her conversation with her sister-in-law Violet Ewing, Supervisor Myrtle Ewing testified that she recalled asking her whether Violet knew the union organizers were around, and that when Violet replied, "yes," she said nothing further. Specifically, Supervisor Ewing denied making the statement attributed to her by Violet Ewing that Morris would fire employees, no matter how good they were, if they joined the Union. I resolve these conflicts in the testimony against Respondents because: (1) I credit the testimony of employee McGee and Violet Ewing; (2) the statements attributed to Supervisor Ewing are consistent with Respondents' antiunion attitude and as hereinafter found, with the subsequent discharge of employees

because of their union adherence; and (3) I do not regard Supervisor Myrtle Ewing as a credible witness.[19]

Accordingly, I find and conclude that by the above statements made by Supervisors Grace Higgins and Myrtle Ewing to employees Pearl Coker, Pauline McGee and Violet Ewing, Respondent Walton engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act. *Drummond Implement Co.*, 102 NLRB 596, 598; *Cleveland Trust Company*, 102 NLRB 1497, 1499.

e. Alleged interference, restraint and coercion by Loganville Pants Superintendent Hughley

The complaint alleges that on or about January 8, 1958, Superintendent Hughley promulgated a rule prohibiting Loganville Pants employees from talking about the Union in the plant, not limited to working time, and that he threatened to cease attempting to procure orders if the em-

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[19] I base my conclusion on the unreliability of the testimony of Supervisor Myrtle Ewing on various considerations, including, but not limited to: (1) the improbability of her telling Pauline McGee that she was digging her own grave and uncooperative merely because on this one occasion, Pauline McGee was not at her machine to resume work when the bell rang, although admittedly she was enroute to her machine; (2) the implausibility of Supervisor Ewing's testimony, which in fact was contradicted by both Superintendent Prosterman and Morris Scharff, that she had never received instructions not to discuss the Union with employees; (3) her likewise implausible testimony that she neither received instructions from nor consulted with Morris Scharff, whom I have already found to be the principal official of Respondents in respect to production (Myrtle Ewing's testimony was given before Respondents conceded Morris Scharff's agency and before he testified that he supervised Walton); and (4) her testimony that she began preparing for the layoff in December, when according to Superintendent Prosterman and Morris Scharff, they did not notify the supervisors about the layoff until the middle of January.

ployees persisted in talking about the Union. The testimony in support of these allegations was as follows:

Loganville Pants employee Ruth Brooks testified that following a lunch hour argument among the employees in the plant about the Union, Superintendent Hughley cut off the power to the machines and told all the employees: "I am sick and tired about hearing this talk about the Union. I am working trying to get contracts so that you girls can have work, and if this is the way you are going to do, I am through with it." Employee Lela Beaver testified that on this occasion, Hughley said that he had heard enough about the Union and did not want to hear any more about it, that he was tired of it, that he did not need the Union to tell him what to do and push him around, and that if the employees had anything to say about the Union, to say it at home or outside the plant, not in the plant. Referring to new contracts, employee Beaver testified that Hughley said he would get them if the Union would leave him alone. According to employee Nancy Williams, Superintendent Hughley said on this occasion, that he would not have any union talk in the shop, that he was trying to get more contracts but if the employees were not interested, he would not try. According to employee Williams, Hughley's remarks were prompted by the fact that the argument about the Union had continued after the bell to resume work had rung, and some of the girls were not at their machines.

At the time of the hearing, Hughley was no longer employed by Respondents and he was not called to testify. Loganville Pants Supervisor Edna Atha testified that she never heard Mr. Hughley make a speech at the plant and knew of no rule prohibiting talking about the Union on com-

pany property. Morris Scharff also testified to lack of knowledge of such a rule.

Although Respondent Loganville Pants had a right to prevent interference with production by discussion of the Union during working hours, it had no right to prohibit such discussion during nonworking time.[20] The uncontradicted evidence discloses that the prohibiting of union talk in the plant was not limited to working time. Accordingly, I find that by the announcement of such prohibition by Superintendent Hughley, Respondent Loganville Pants interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby violated Section 8 (a) (1) of the Act.

Moreover, the argument in the plant described above did not warrant Hughley's threat to cease trying to get work or contracts for the plant, and that threat clearly restrained and coerced and interfered with the employees' rights to engage in concerted activities. *B. & Z. Hosiery Products Co.*, 85 NLRB 633, 634. Accordingly, I find that by such threat, Respondent Loganville Pants engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

f. Other alleged incidents of interference, restraint and coercion

Paragraph 19 of the complaint alleges that Respondents, through Morris Scharff, their agent, conditioned employment opportunities for respective employees upon whether

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20 *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793; *Peyton Packing Co.*, 49 NLRB 828, 843, enfd. 142 F. 2d 1009 (C. A. 5); cert. den. 323 U. S. 730.

or not the Union became the representative of their employees. The testimony adduced in respect to this allegation was that sometime during the month of January 1958, Walton employee Nellie Wood asked Morris Scharff for a job for her stepdaughter, Isabelle Gibson. Morris replied, "Let's wait and see what the Union does." This conversation was admitted by Morris Scharff during his testimony.

I do not regard this statement as sustaining the allegation of the General Counsel's complaint. If what was intended by Scharff's statement was that Isabelle Gibson would get a job if the Union did not succeed in achieving representative status, it would obviously interfere with, restrain and coerce Nellie Wood in the exercise of her right to engage in concerted activity and would violate Section 8 (a) (1) of the Act. However, the statement was ambiguous and capable of many interpretations other than the one suggested above and does not necessarily imply that the job would be given if the Union did not become the representative. I therefore conclude and find that the General Counsel has not sustained the burden of proof of this allegation and, accordingly, I will recommend dismissal of paragraph 19 of the complaint.

Paragraph 21 of the complaint alleges that Respondents induced and encouraged employees to withdraw from and renounce the Union and assisted them therein. The testimony in respect to this alleged violation of Section 8 (a) (1) of the Act was as follows:

As aforestated, a number of employees testified that in Morris Scharff's speech of December 3, 1957, he said *inter alia*, that if employees had signed union cards and wanted

to forget about it, he was willing to forget about it. This statement does not appear in the transcription of the speech of Morris Scharff made on December 3, which I have credited, and accordingly, I do not credit the recollection of the witnesses in this respect. The record further discloses that on or about December 9 or 10, 1957, a Notice to Employees was posted by Respondents on the bulletin board at the plants (Resp. Exh. 3), which in substance advised employees of the provisions of the Georgia Right-to-Work Law and that they were not required to join the Union in order to work for Respondents. In addition, on January 18, 1958, both Morris and Arthur Scharff wrote to their attorney, Alexander E. Wilson, Jr., requesting information on how to advise employees on the method of withdrawing their signatures from union cards. On February 4, 1958, Attorney Wilson replied to Morris Scharff by letter (G. C. Exh. 9), stating, "There is no procedure by which this may be done legally" and further stating that if an employee wanted to voluntarily withdraw from the Union, he could write the Union and so inform it. Upon receipt of Attorney Wilson's letter, Morris Scharff posted it on the employees' bulletin board in the plant and beneath it posted a piece of paper on which was written the name and address of the Union. Thereafter, a group of six employees got together and wrote a letter to the Union (G. C. Exh. 6), advising that they wished to withdraw their signatures from their union cards. Two of these employees, called by the General Counsel, testified that their decision to withdraw from the Union was entirely their own and that they got the address of the Union from the bulletin board in the plant.

On the foregoing record, I do not believe that the General Counsel has sustained his burden of proof that the Company

solicited employees to withdraw from the Union. More specifically, I do not regard the mere posting of Respondent's Exhibit 3 and General Counsel's Exhibit 9 and the address of the Union on the bulletin board as sufficient proof of the allegation that Respondents solicited employees to withdraw from the Union. I do not regard the cases cited in the General Counsel's brief in support of this allegation as apposite since those cases involved situations where agents of the respondents requested, assisted, and indeed suggested withdrawal. There is no such evidence in this record. Accordingly, I shall recommend the dismissal of paragraph 21 of the complaint.

D. *The alleged discriminatory discharge of employees*

a. The discharge of Lucille Yancey

Lucille Yancey was one of the first production employees hired by Respondent Walton (June 28, 1957). She had 6 years of previous experience in the garment industry. Prior to the commencement of Walton's operations, Mrs. Yancey had served on a committee which solicited employees to work for Walton. Mrs. Yancey was assigned to the job of sewing linings to the facing of coats. According to her uncontradicted testimony, Mrs. Yancey was told by her supervisor, Grace Higgins, that her work had improved, that the Company was pressing for more production, but that "they [the Company] won't have to worry about you." Mrs. Yancey further testified without contradiction that about 2 months after she started to work for Walton, she asked Arthur Scharff for a transfer to the pants plant because she had more experience on pants and could make more

money, but Arthur rejected the request, saying, "it takes brains to make coats and anybody can make pants." Mrs. Yancey testified that she was never told that her work was unsatisfactory by any of Walton's supervisory personnel.

Mrs. Yancey joined the Union on November 23, 1957, and agreed to give the Union a list of names of employees for solicitation. Between November 23 and December 4, 1957, the date of Mrs. Yancey's discharge, her home was visited frequently by the Union's organizers, both individually and in groups. On Wednesday, December 4, 1957, the day after Scharff's antiunion speech, Mrs. Yancey was discharged by Plant Superintendent Prosterman. The latter told her that he was laying her off because there was not enough work. When she protested, Prosterman asked whether she wanted to talk to Morris Scharff. That same day, Mrs. Yancey spoke to Morris Scharff in his office about her discharge. Scharff called in Dorothy Mitchell, the office supervisor, and said, "Dot, I'm having to lay off Lucille due to the fact that there's not enough work." Mrs. Yancey said that there must be some other reason for her layoff. Scharff replied that her work was bad, and Mrs. Yancey said, "Why are you telling me now about my work? Why wasn't I told before now, and why did you keep me this long?" Scharff did not reply. The following day, Mrs. Yancey again visited Morris Scharff in his office to inquire about her job and the cause of her discharge. During this visit, Scharff exhibited a union paper to her, and said, "Lucille, I'll tell you, I've been informed that you and your husband have been working with the union organizers." Scharff also asked Mrs. Yancey where her husband worked and if her husband was an of-

ficer of the union there.[21] Mrs. Yancey answered the latter question affirmatively, but added that neither she nor her husband had been helping to organize the plant. She requested reinstatement, saying that her job meant more to her than being a member of the Union and that if Scharff would restore her to her job, she would not vote for the Union. Scharff replied that he did not know whether Mrs. Yancey had signed a union card, that he could not put her back to work, but if the Union did not get in, he would reinstate her.

Morris Scharff testified that the reason for Lucille Yancey's discharge was that her work was completely unsatisfactory in quality in that she did not sew the proper facing to the proper lining. He testified that on a number of occasions, he had observed that when Mrs. Yancey received a bundle of mixed colors, she would pull out all the linings of one color in order to sew them with the same color thread instead of taking them in order and changing the thread whenever necessary. Because of this, she was unable to get the linings back in proper place and that caused her work to be mixed up. He testified that he reprimanded her about this on 4 or 5 occasions over a period of 3 to 4 months. He further testified that her production was insufficient and that she had $3 and $4 a week makeup for several consecutive weeks.[22] Scharff testified that Supervisor Grace Hig-

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[21] Ethan Yancey, the husband of Mrs. Yancey, is a paid representative of the Railway Clerks Union in Atlanta.

[22] Makeup or makeup pay, a term used frequently in the record and this report, was defined as the difference between the actual earnings of an employee (computed by multiplying her production by her piece rate) and the legal minimum of $1 an hour which the employee was paid if she did not produce sufficiently to earn the legal minimum.

gins came to him about 10 days before Mrs. Yancey's discharge and threatened to quit because Mrs. Yancey was acting up and making her life miserable, and that on another occasion, he had seen Grace Higgins crying on the job.[23]

Scharff testified that he had two conversations with Lucille Yancey after her discharge. In the first of these conversations which occurred several days after her discharge, Mrs. Yancey said that she knew she had been terminated because of her union membership. Scharff denied it. He testified that Mrs. Yancey then asked to be reinstated and offered to resign from the Union and to work for Respondents "with regard to the Union," but he rejected the offer. Scharff further testified that Mrs. Yancey said that she had worked to bring the plant to Loganville, to raise money to build the plant, to recruit employees, and to further the plant's interests, and could do so again, but he said "no." Scharff neither affirmed nor denied Mrs. Yancey's testimony that he told Dorothy Mitchell that he was laying off Mrs. Yancey for lack of work.[24] Scharff further testified that his second conversation with Mrs. Yancey in his office 3 or 4 days later, was also attended by his brother Arthur Scharff, and Mrs. Yancey's husband. Morris Scharff testified that Mrs. Yancey again told him she was fired because of her union activity. She showed him a discharge slip from a prior job. Morris began to copy the reason for the discharge from the slip, but Mr. Yancey took the slip away before Morris could really examine it. Arthur Scharff then left the office and Mrs. Yancey again asked to be put back to work but he refused. Morris Scharff denied that anything

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[23] I assume that Scharff meant because of Mrs. Yancey.

[24] Dorothy Mitchell was not called by Respondents to testify although still employed by them.

was said by him concerning unions. He testified that at the time of her discharge, he did not know that Mrs. Yancey belonged to the Union and that her union membership had nothing to do with her discharge or with the fact that she was never rehired. He denied that he told Lucille Yancey that if the Union did not get in, she could have her job back.

Superintendent Prosterman testified that Lucille Yancey was discharged because she was an "incompetent," "undesirable," "unsatisfactory" employee who "grumbled" and "complained" constantly to fellow employees. He testified that on a number of occasions, he told Lucille Yancey that the quality of her work was poor, but he was unable to recall when he did so. Prosterman also could not recall whether he told Mrs. Yancey that she was discharged or laid off or whether he told her that she was laid off for lack of work. He testified that she never made production standards, "in other words, she had makeup to a great degree." Regarding the quality of her work, Prosterman testified that Mrs. Yancey was unable to distribute the fullness in the garment properly, that on occasions she sewed the wrong linings to the wrong facings, and that, because she was unable to produce the quality of work, she was unable to make her minimum. On cross-examination, Prosterman testified that nothing unusual occurred on the day Mrs. Yancey was discharged or around that time which caused her discharge on that day rather than on any other. He further testified that Lucille Yancey was an undesirable employee ever since September 1957, when he came to work for Respondents. He testified that he received unfavorable reports about Mrs. Yancey practically daily. Prosterman denied that he knew that Mrs. Yancey was active in the Union at the

time of her discharge and that it was pure circumstance that she was discharged just after she became active in the Union.

Supervisor Grace Higgins testified that Mrs. Yancey was fired for very poor work and because she was "uncooperative" and "unruly." She explained that Mrs. Yancey did not sew her work so that it would fit properly in the garment, never put in the proper fullness, sewed darts on the wrong side, and mixed the linings, i. e., did not match the right facing with the right lining. By uncooperative, Mrs. Higgins explained that Mrs. Yancey did not want to take instructions. When she came to Mrs. Yancey to check her work and tell her how to do it, Mrs. Yancey would say "Now, listen, you will have to make it a little easier on us around here." Mrs. Higgins further explained that by uncooperative, she meant that Mrs. Yancey wanted the linings cut an inch longer so that she could sew them in as she pleased. This, according to Mrs. Higgins, happened frequently, every day and all during the time she was there. Mrs. Higgins further explained that by unruly, she meant that Mrs. Yancey would not take instructions and that she fussed at other girls and always complained about her machine. By fussing at other girls, Mrs. Higgins meant that Mrs. Yancey complained that Mrs. Higgins could not give instructions and that she was unable to do work that pleased Mrs. Higgins. This, according to Mrs. Higgins, took place just about every day all during the period from July through December. Mrs. Higgins further testified that Mrs. Yancey was discharged because she could not make production. She further testified that nearly all of Lucille Yancey's work was bad and had to be done over. Mrs. Higgins said she had to talk to Lucille Yancey about her bad work every

day. She also testified that she warned Mrs. Yancey that if she did not improve, she would be discharged. Referring to Mrs. Yancey's request that the lining be cut an inch longer so that it would be easier to put in the required fullness, Mrs. Higgins testified that the additional inch was unnecessary because they did not need that much fullness in the lining. Like Prosterman, Mrs. Higgins testified that nothing unusual happened on the day or week before Lucille Yancey was fired, that her work was the same as always. Mrs. Higgins testified that mistakes in a garment factory are rather frequent but that Mrs. Yancey's mistakes were more than normal. She denied that she ever requested Mrs. Yancey's discharge. She also denied that she ever heard Prosterman warn Lucille Yancey about discharge or layoff.

Three Walton employees were called by Respondents to testify concerning Lucille Yancey's alleged bad work.

Imogene Meeks, an employee of Walton who, together with Odelle Barnes, performed the operation after Mrs. Yancey, testified that she received coats to work on, on which Mrs. Yancey had sewn the wrong lining to the wrong facing. She further testified that Lucille Yancey sometimes sewed darts on the wrong side of the material. She testified that the number of darts sewn by Yancey on the wrong side was 1 or 2 a day and that the sewing of the wrong linings occurred about once every day and sometimes twice a day.[25] Mrs. Meeks further testified that she heard Lucille

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[25]Mrs. Meeks testified that she sewed 200 pockets a day and if she sewed facings she did about 250 a day. Since Lucille Yancey was the only employee sewing linings to facings and darts on linings, the operation immediately preceding that performed jointly by Imogene Meeks and Odelle Barnes. I infer that Lucille Yancey worked on at least 200 to 250 garments, which meant that Yancey's defects, according to this witness' testimony, would be 1 or 2 a day out of at least 200 to 250.

Yancey and Mrs. Higgins arguing about the former's defective work and she further testified that Lucille Yancey argued with her and Odelle Barnes about making more money than she. However, on cross-examination, Mrs. Meeks denied that she had any arguments with Lucille Yancey while the latter was working for Walton. Moreover, her testimony regarding arguments with Mr. Yancey was not corroborated by Odelle Barnes. The latter, who sat nearer to Mrs. Yancey's machine than Mrs. Meeks, also denied that she ever heard Grace Higgins talk to Mrs. Yancey about her work.[26]

Odelle Barnes, an employee of Walton who performs the same operation as Imogene Meeks, testified that sometimes Mrs. Yancey sewed the wrong lining to the wrong facing, and sometimes she found darts that had been sewn by Lucille Yancey on the wrong side. Mrs. Barnes was unable to tell how many times Lucille Yancey got the linings mixed up or the darts sewn on the wrong side. Mrs. Barnes, who is now also doing the work which Lucille Yancey previously performed, admitted that she occasionally sews the wrong facing to the wrong lining. When asked on cross-examination whether or not she made more errors of this type than Yancey or visa versa, her response was, "everybody makes mistakes." She testified that she did not know whether she made as many mistakes as Yancey did, or whether Frances Elizabeth Johnson, who replaced Yancey when the latter was fired, made as many mistakes as Yancey. On redirect examination, Mrs. Barnes testified that Lucille Yancey had more work to repair than she, but explained that since she

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[26]Accordingly, I do not credit Mrs. Meeks' testimony either in respect to the alleged arguments between Supervisor Higgins and Mrs. Yancey, or in respect to arguments between the latter and Odelle Barnes and Mrs. Meeks.

(Barnes) also performed the operation which followed she was able to detect and correct her own errors before her work passed along to other operators.

Ruby Berry, an employee of Walton, who between July and October 1957, worked at the job of side seaming and sewing in side pockets, an operation which followed that of Lucille Yancey, testified that during the period she worked on that operation, she had come across coats on which the wrong facing had been sewn to the wrong lining, or the darts were sewn on the wrong side of the lining. On these occasions she took the coats back to Supervisor Grace Higgins. Mrs. Berry was unable to state specifically how many defective garments she returned. She said she came across them pretty often, but by pretty often she meant every day or so. Mrs. Berry further testified that she did not count the number of defective garments she found, that sometimes there were a good many and sometimes just a few. When asked whether or not there were as many as five in a single day, she was unable to state.

Mrs. Yancey denied that Supervisor Grace Higgins had ever told her that the quality of her work was poor and denied that Higgins had ever instructed her on how to do her work or corrected her on the way she was working. Mrs. Yancey admitted that she had suggested to Mrs. Higgins that the linings should be cut a little longer, not because she was having trouble with the linings, but because if cut an inch longer, it would be simpler to put in fullness all the way. Mrs. Yancey denied that she ever had any arguments with Mrs. Higgins or any other supervisor and she testified that all their discussions were on a friendly basis. Mrs. Yancey further testified that she had no discussions other

than routine with the other employees. Specifically, she denied having any arguments with any of the employees.

The determination of whether Lucille Yancey was discharged because of her activity on behalf of the Union, or whether, as contended by Respondents, she was discharged because she was an undesirable employee, presents primarily a question of credibility. My analysis of the reasons assigned by Respondents for her discharge do not persuade me of their validity.

The alleged failure of Lucille Yancey to make production is belied by her payroll record (G. C. Exh. 29) which showed her makeup pay was not a regular occurrence, contrary to Prosterman's testimony that she "never" made production. Moreover, the payroll record shows that in the 8 weeks preceding the week of her discharge, Lucille Yancey did not have a single full week's work.[27] In view of the absence of any testimony regarding absenteeism on Yancey's part, and from her testimony that she made production when she had enough work, I am persuaded that to the extent she had makeup pay, it was attributable to insufficient work to keep her occupied full time. Accordingly, I do not believe Respondents' assertion that failure to make production was one of the reasons she was discharged.

Moreover, I do not place any credence in Respondent's testimony regarding Lucille Yancey's alleged uncooperative and unruly behavior. Supervisor Higgins' explanation of what she meant by uncooperative and unruly behavior

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[27] In 4 of these weeks, Lucille Yancey only worked 2 full days or less, in 3 weeks, she worked 3 full days or less, and in only 1 week did she work as much as 4 days.

boiled down primarily to the fact that Mrs. Yancey requested that Respondents "make it a little easier" for her to properly perform her job of putting in "fullness," by cutting the lining an inch longer. Whether or not the extra inch was necessary, I cannot perceive how the request therefore demonstrated either lack of cooperation or unruliness. Additionally, Mrs. Higgins described as uncooperative and unruly conduct by Mrs. Yancey, that she always complained about her machine and "fussed" at other girls. As to the machine, the complaints, if made were apparently well founded, since Mrs. Yancey's successor on this job, Frances Elizabeth Johnson, was unable to work on it, and it was promptly exchanged for another. As to the "fussing" at other girls, Mrs. Higgins' testimony was not corroborated by any of the employee witnesses called by Respondents and I do not credit Mrs. Higgins in this respect.[28] Based on the credited testimony of Odelle Barnes and Lucille Yancey, I also do not credit Higgins' testimony that she instructed Yancey on how to do her work properly and that Yancey resented and refused to take such instructions. Since I do not believe Respondents' testimony that Lucille Yancey was "uncooperative" or "unruly," I also do not believe that that was one of the reasons for her discharge.

Finally, Respondent Walton asserts that Yancey was discharged because of the poor quality of her work. According to the testimony of Morris Scharff and Prosterman, Yancey's work was so bad that she was frequently reprimanded therefor throughout her employment by Walton. According to Grace Higgins she had to talk to Yancey about

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[28]See pages 89-90 and footnote 26 for my reasons for not crediting the testimony of employee Meeks regarding alleged arguments with Mrs. Yancey.

her bad work every day. Yet, none of the nonsupervisory employees who testified for Respondent Walton and who worked near Lucille Yancey's machine ever heard either Prosterman or Scharff reprimand her.[29] Lucille Yancey testified that she had never been told prior to her discharge that her work was unsatisfactory, and that even when she was advised of her discharge, she was first told that it was a layoff because of lack of work. There was nothing either in the testimony of Mrs. Yancey or in her demeanor while testifying which causes me to believe that she was other than a credible witness and I credit her testimony in this regard. Conversely, I disbelieve the testimony of Supervisor Higgins and Morris Scharff that Mrs. Yancey was frequently, if not daily, reprimanded about her work. These witnesses have been discredited by me in connection with other allegations of the complaint and I do not believe them in this respect. As to the witness, Plant Superintendent Prosterman, I likewise do not credit his testimony that he reprimanded Mrs. Yancey for bad work, nor his uncorroborated testimony that she grumbled and complained constantly to fellow employees.[30] The sum of the testimony of Meeks, Barnes and Berry which I credit in respect to the

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[29] Employee Imogene Meeks who testified to the alleged arguments between Mrs. Higgins and Yancey has already been discredited by me in this respect. See footnote 26, *supra*.

[30] I found Prosterman's testimony with respect to Morris Scharff's alleged lack of official connection with the Company to be wholly untrustworthy. He testified that Morris Scharff was merely a consultant and not his boss. Prosterman testified that his boss was Arthur Scharff. I have already found that Morris Scharff was the principal operating official of Respondents, and Morris Scharff admitted that he supervised the Walton plant. If corroboration of my conclusion that Morris Scharff was and is Prosterman's boss were required, it is shown by the fact that Prosterman sent Mrs. Yancey to Morris rather than Arthur to discuss the reasons for her discharge. Moreover, as aforestated Prosterman's testimony that Mrs. Yancey never made production was shown to be false by her payroll record.

quality of Mrs. Yancey's work, is that occasionally, once or twice a day out of approximately 250 garments, she mismatched the proper facing and lining and sewed the darts on the wrong side of the lining. Contrary to the testimony of Supervisor Higgins, I am not persuaded that Yancey's errors of this type were more than those of other employees who have performed this operation. Supervisor Higgins admitted that mistakes are frequent in a garment plant. Respondent's witness employee Odelle Barnes admitted that she also makes the same type of errors as those attributed to Mrs. Yancey. Indeed, she testified that "everybody makes mistakes." The only testimony regarding Yancey's alleged failure to distribute fullness properly was that of Prosterman and Higgins[31] whom I generally discredit, and, moreover, even if it occurred which I doubt, I am not persuaded that it was due to any lack of ability on the part of Mrs. Yancey but rather to the skimpy cut of the lining which she admittedly and frequently called to the attention of her supervisor. Moreover, if Yancey's work quality was so bad that it required daily admonitions from Higgins, and frequent reprimands from Scharff and Prosterman, Respondent Walton would have fired her long since, instead of retaining her in their employ for over 5 months.[32] Accordingly, I do not believe Respondents' testimony that Mrs. Yancey was discharged because of her incompetency.

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[31]Mrs. Higgins testified that Yancey never distributed the fullness properly.

[32]Moreover, it is beyond my comprehension that if, as testified by Morris Scharff, Supervisor Grace Higgins had threatened to quit and was "crying" because of her inability to get along with Mrs. Yancey, he would not have done so forthwith instead of 10 days thereafter, especially since Yancey was allegedly such a poor employee.

In a letter to his counsel (Charging Party's Exh. 2), Morris Scharff also gave as a reason for Yancey's discharge, the fact that another employee "who had seniority" was available to take over her job. Yancey's operation was taken over by Frances Elizabeth Johnson. An examination of her payroll record discloses that she had less seniority than Yancey. Thus, this alleged reason for her termination is likewise without substance.

For all the foregoing reasons, and for the further reason that Mrs. Yancey was discharged in the middle of a workweek although nothing unusual had occurred that day or that week in respect to Mrs. Yancey's work, I discredit and reject the reasons asserted by Respondents for her discharge on December 4, 1957.

Although, I have discredited the reasons asserted by Respondents for Mrs. Yancey's discharge, there remains for disposition the question of whether the General Counsel has sustained his burden of proving that her discharge was discriminatorily motivated.

I have already found that the Union started its organizing campaign in the middle of November 1957, and that shortly after the Union started its organizing campaign, Respondents in an effort to counteract the Union's organizing efforts, engaged in acts of interference, restraint and coercion of employees in violation of Section 8 (a) (1) of the Act. Thus, as I have already found that on November 30, just 4 days before the discharge of Mrs. Yancey, agents of Respondent, including Morris Scharff and J. B. Stevens had engaged in surveillance of the union organizers. Moreover, on the day before Mrs. Yancey's discharge, Morris Scharff had made

an antiunion speech in the plant, including therein a statement which I have found to be the equivalent of a threat to close the plant if the Union came in, or at least a threat to the economic security of Respondents' employees. Yancey's discharge the next day, came shortly after she had signed with the Union and after the union organizers had paid frequent visits to her home. Thus, notwithstanding Morris Scharff's denial of knowledge regarding her union status at the time of her discharge, on the basis of Respondents' surveillance of the activities of the union organizers on November 30, 1957, there is sufficient evidence for me to infer that Mrs. Yancey was known or believed by Respondent Walton to be an active union adherent. However, I do not rely on this inference alone. I credit Mrs. Yancey's testimony that in her conversation with Morris, the latter questioned her regarding her husband's status as a paid official of the Railway Clerks' Union and told Yancey that he had been informed that she and her husband were assisting the union organizers and that she would be rehired if the Union did not get in.[33] Yancey's discharge for her union adherence is

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[33]Morris Scharff's version of these conversations is not credited by me except to the extent consistent with Mrs. Yancey. Aside from my general disbelief in his veracity, as heretofore noted, and my belief in Mrs. Yancey's credibility, I have the following reasons for not crediting Morris Scharff's version of these conversations. Dorothy Mitchell was not called by Respondent as a witness although apparently available to them, to confirm or deny Mrs. Yancey's version of the conversation. Arthur Scharff, although called as a witness, did not testify regarding his participation in the second conversation with Mrs. Yancey, although allegedly he was present. Morris Scharff's testimony obviously confused his conversation with Mrs. Yancey after her discharge, with one he had with employee Ruth Brooks after her discharge, during which Brooks' husband was present and Brooks' discharge slip from a prior job (Resp.'s Exh. 1) was exhibited to Morris and then taken back by Brooks' husband before Morris could copy it.

consistent with the threat repeated by Supervisor Ewing to employee Myrtle Ewing, that regardless of competence, Morris Scharff would fire any employee if he found out she joined the Union. Accordingly, on the record before me, I am satisfied that Mrs. Yancey was discharged on December 4, 1957, because of her activity on behalf of the Union. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Lucille Yancey thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act.

b. The discharge of Grace McCart

Grace McCart was hired by Respondent Walton on June 27, 1957. Prior to her employment by the Company she had worked in the garment industry for about 5 or 6 years. When she first started to work for Walton, she had no regular operation but later was assigned to the regular job of felling undercollars, that is, sewing the undercollar to the coat. In the performance of that job, Mrs. McCart used a Lewis blind stitching machine, a machine that sews together two layers of material without going completely through the bottom layer. It was not disputed that this is a more difficult machine to operate than the ordinary sewing machine. Mrs. McCart testified without contradiction that her machine did not operate satisfactorily and frequently skipped stitches, thereby improperly fastening the undercollar to the coat. She reported this difficulty to her supervisor, Myrtle Ewing, on many occasions. Although the plant mechanic fixed the machine, it did not stay in repair very long before it malfunctioned again. Occasionally, this happened several times during the same day. McCart com-

plained about the machine every day for about the first 3 months she worked on it.

On January 9, 1958, Mrs. McCart attended a union meeting at the Rosebud Community House. The next day, January 10, 1958, she was discharged by Plant Superintendent Prosterman.[34] Prosterman came to McCart's machine and told her that she was being discharged because of too much bad work and because a lot of collars had been sewn with the wrong color thread. McCart replied that she had been using the same color thread since she had been on that machine. She asked Prosterman if he was sure that that was the reason for her discharge. Prosterman said yes. Mrs. McCart credibly testified that before that day, neither Myrtle Ewing, Prosterman nor any other supervisor, had told her that her work was bad.

On January 14, 1958, following her discharge, Mrs. McCart, visited Morris Scharff in his office, to discuss her termination. As hereinbefore related in connection with the section of this report entitled "Interrogation of Employees

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[34]McCart's testimony that she was discharged by Prosterman was corroborated by another employee Rose L. Tribele, who sat close enough to McCart's machine to reach out and touch her. Both Plant Superintendent Prosterman and Supervisor Myrtle Ewing testified that it was the latter who discharged McCart. I credit Grace McCart's and Rose Tribele's testimony that it was Prosterman who did so. There would be no reason for Mrs. McCart or for the witness, Rose Tribele to testify that Mrs. McCart had been discharged by Prosterman rather than Supervisor Ewing since, if the discharge was illegal, Walton would be equally responsible regardless of which of them did so. There was no showing of any animus on the part of the witness, Rose Tribele or that she had any interest in the proceeding which would cause her to testify falsely. On the other hand, I have already, in connection with other aspects of this case, had reason to disbelieve testimony given by both Prosterman and Supervisor Ewing. Accordingly, I do not credit their testimony that Ewing discharged McCart.

by Morris Scharff" (pp. 73-74). Grace McCart told Scharff that she believed that she had been discharged because she had signed a card for the Union, and Scharff, in reply, inquired, whether she had attended the union meeting on January 9, asked who was at the meeting, who had accompanied McCart to the meeting, and whether Ruth Brooks, Pearl Coker and Jeanette Beaver had attended. When McCart refused to divulge the names, Morris Scharff said that he knew everyone who attended the union meeting, anyway, and that Brooks, Coker and Beaver "were heavily prounion and active in the organization attempt."[35] Scharff finally told her that they might have work for her later on.

Plant Superintendent Prosterman testified that Grace McCart was fired because of her continuous history of poor work, much of which needed repair. He allegedly therefore decided that rather than accept more work of the same type, he would dispense with her services and try someone else on her job. Supervisor Myrtle Ewing and Morris Scharff also testified to substantially the same reasons for Grace McCart's discharge. I do not believe the testimony of Prosterman, Ewing or Scharff, regarding their reasons for McCart's discharge for the following reasons:

1. At the time of McCart's discharge, Respondents were preparing for a layoff of employees because of a cut back in their production requirements. According to Prosterman's testimony, in December 1957, in preparation for the layoff, he had consulted with Walton's supervisors regarding the

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[35]As aforestated, Scharff substantially admitted this interrogation of Grace McCart and I have not credited his explanation that he was attempting to reassure McCart that her union membership and attendance at a union meeting were not the reasons for her discharge.

work quality of Walton's employees with a view of laying off those whose work was of poorer quality. Prosterman allegedly prepared a report in December 1957, of those whose termination was thus contemplated (G. C. Exh. 19). Yet, notwithstanding McCart's alleged continuous history of poor work, her name was not among those who were to be laid off. Prosterman's attempted explanation for this, that her machine was a difficult one to operate and he had no replacement for her, is likewise not believable. Walton employee Mary Alice McWalters, who was put on McCart's operation after the latter's discharge, had been working in the Walton plant since the middle of December 1957, and prior thereto, had worked on the same type of machine in Respondent's pants plant before being transferred to the coat plant. Thus, a replacement for McCart was available, contrary to Prosterman's testimony.

2. Scharff's testimony regarding the reasons for McCart's discharge are different from those he supplied to his counsel (Charging Party's Exh. 2). In that letter, he wrote:

> "Grace McCart — she had never made her piece-rate and her quality was declining and she was being held to a certain price . . ."

In addition to the fact that "declining" quality is inconsistent with Prosterman's testimony regarding McCart's "continuous" history of poor quality, the payroll record of Grace McCart (G. C. Exh. 35-A and B) shows that Grace McCart consistently made her production every week commencing with the week ending October 11, 1958.

3. Finally, the testimony regarding McCart's continuous poor work cannot be accepted by me, in view of the fact that Respondents rehired McCart on March 3, 1958, just 6 weeks after her discharge, for the very same job she had allegedly performed so badly as to require her discharge. Moreover, McCart testified without contradiction that since her reemployment, she has been using the same color of thread she always used before.[36]

Under all the circumstances herein, including Respondents' admitted hostility to the Union, Morris Scharff's professed knowledge of all who attended the union meeting of January 9, 1958, his interrogation of McCart regarding her attendance and the attendance of others at that meeting, McCart's discharge on the day following the meeting, and my disbelief of the reasons assigned by Respondent Walton for her discharge, and its consistency with the threat repeated by Supervisor Ewing that Morris Scharff would fire any employee who joined the Union, I find and conclude that Respondent Walton had knowledge of McCart's attendance at the union meeting at the time of her discharge and discharged her because of that fact. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Grace McCart, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act.

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[36]Two Walton employees, inspectors, testified that they found places where the thread had skipped on the collars of coats sewn by Grace McCart. Their testimony regarding the quantity of such defective work was extremely vague, notwithstanding considerable effort by the examiners to elicit more specific information. Moreover, the discovery of such defects is consistent with the uncontradicted testimony of Grace McCart regarding the malfunctioning of her machine and thus, does not establish alleged poor quality.

c. The discharge of Pearl Coker

Pearl Coker was hired by Respondent Walton on July 26, 1957. She was put on the operation known as setting collars on the coats — that is sewing the collar to the coat. She was discharged by Walton on Wednesday, January 15, 1958, the day after Morris Scharff interrogated Grace McCart about Coker's attendance at the union meeting of January 9 and admittedly told McCart that Coker was one of the leading proponents of the Union.

Coker testified that at the time of her discharge, Morris Scharff told her that her work was satisfactory and very nice but that she was not doing enough work or earning enough money and he would not have anyone on that job who could not earn $55 or $60 a week. Mrs. Coker asked to be placed on another operation, but this was refused. According to Coker's credited testimony, she was never told prior to her discharge that she was not doing enough work. The separation notice received by Pearl Coker from Walton (G. C. Exh. 8) discloses that she was discharged on January 15, 1958, because she "could not produce quantity of work required on her operation." On October 7, 1958, just prior to the hearing in this proceeding, Pearl Coker was reemployed by Walton and assigned to the identical operation which she had performed prior to her discharge on January 15, 1958.

Pearl Coker's supervisor, Grace Higgins, testified that Pearl Coker was not only a slow operator, but also that her work was unsatisfactory. She stated that Coker did not set the collar properly, did not get the fullness in the right places and that because of these errors, Coker's work had

to be redone. Higgins further testified that about once a week she spoke to Coker about the poor quality of her work as well as about her continuous makeup pay. Higgins also testified that prior to Mrs. Coker's discharge, she and Prosterman had discussed the fact that there were too many girls in the section and decided to lay off Pearl Coker, who was the slowest in production. In making this selection, Mrs. Higgins stated that she compared Coker's work with that of Mary Lou Partain and they concluded that since Partain did superior work to Pearl Coker and was capable of performing additional operations which Pearl Coker was unable to perform, Coker would be the one to be discharged. According to the testimony of both Plant Superintendent Prosterman and Morris Scharff, the reason for discharging Pearl Coker on January 15, 1958, and not subsequently on January 31, 1958, although Respondents were planning to lay off employees on the later date, was that a former employee, Louise Sammons, a much better and faster operator than Pearl Coker, was available and had indicated a desire to return to Walton.

Supervisor Higgins' testimony in respect to the unsatisfactory quality of Pearl Coker's work was contradicted by both Plant Superintendent Prosterman and Morris Scharff, both of whom testified on the subject of Pearl Coker's discharge. According to Prosterman, Pearl Coker's quality had improved approximately 2 months before her discharge and, according to Morris Scharff, "Pearl Coker's work was fair." None of Respondent's witnesses contradicted Pearl Coker's testimony that at the time of her discharge, she was told that the quality of her work was "satisfactory" and "nice." Moreover, the separation notice issued by Walton to Coker did not assign poor quality as

the reason for her discharge. Accordingly, I do not credit the testimony of Grace Higgins in respect to the alleged poor quality of Pearl Coker's work.[37]

I likewise do not credit Respondents' testimony that Pearl Coker was discharged because she did not produce a sufficient quantity of work. According to the credited testimony of Hester Lou McCart, at the time of Pearl Coker's employment by Walton, there were three operators regularly assigned to setting the collars to the coats, Pearl Coker, Mary Lou Partain and Hester Lou McCart. Hester Lou McCart testified that Mary Lou Partain was as slow an operator as Pearl Coker. In connection with the contemplated layoff of employees, Plant Superintendent Prosterman had prepared notes comparing employees in the plant and selecting employees for layoff purposes (G. C. Exh. 19). Allegedly these notes were prepared in December 1957. Significantly, these notes did not list Pearl Coker as one of those to be laid off in the reduction in force. On the other hand, Mary Lou Partain was so designated with the notation "slowest operator in [the collar] section. "*Must be replaced.*" [Emphasis in the exhibit.] Notwithstanding, it was Pearl Coker and not Mary Lou Partain who was discharged. Prosterman's only explanation was that he changed his mind. On the foregoing record, I am not persuaded that Pearl Coker's lack of productive capacity was the real reason for the sudden decision to discharge her in the middle of a workweek, especially in view of her subsequent rehiring by Respondent to perform the identical operation which she was allegedly incapable of

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[37] In the section of this Report entitled "Alleged threats by Supervisors Grace Higgins and Myrtle Ewing," I have set forth additional reasons for doubting her Higgins' veracity.

performing to Respondents' satisfaction theretofore.[38] Nor am I persuaded of the veracity of Respondents' explanation for their decision to discharge Pearl Coker on January 15 rather than on January 31 when other employees were terminated because of the cutback in production. As aforestated Respondents' explanation for the earlier discharge of Pearl Coker was the availability of Louise Sammons, a former and allegedly superior employee who had indicated a desire to return to work for Walton. However, the payroll record of Respondent Walton for Louise Sammons shows that the latter did not return to work for Walton until the week ending February 7, 1958, 2-1/2 weeks after Coker's discharge. Thus, the attempted explanation is, in my opinion, no explanation for Coker's precipitous discharge in the middle of a workweek, 2-1/2 weeks before her replacement was actually available, especially since no testimony was offered by Respondents to explain the hiatus period. In view of the foregoing, the real reason for Coker's sudden discharge obviously lies elsewhere.

According to her credited testimony, Pearl Coker joined the Union and attended two union meetings, the last of which was on January 9, 1958. On January 10, 1958, the Friday before her discharge, Pearl Coker told Grace Higgins that she had attended the union meeting the night before. Mrs. Higgins replied that she did not know who in the plant would want a union and further stated that at their supervisory meeting, the Scharffs had said that they would close their doors down before they would work with union labor. Morris Scharff, who was admittedly opposed to the Union, had on December 3, 1957, told Respondents' employees in

[38]No explanation for rehiring Coker was given by Respondents.

a speech, that if they wanted a union, they could have it without him. Scharff testified that at the time of Coker's discharge, he did not know that Pearl Coker was a member of the Union. This testimony directly contradicted that given by him in connection with the discharge of Grace McCart, in which he admitted that on January 14, 1958, the day before Coker's discharge, he had asked Grace McCart whether Pearl Coker had attended the union meeting of January 9 and testified that his reason for doing so was that it was common knowledge that Pearl Coker was one of the employees who were heavily prounion and active in the Union's organizational attempt. In view of this apparent Freudian slip, I am unable to credit Morris Scharff's denial of knowledge of Coker's union adherence and activity nor do I believe his assertions of the reasons for Pearl Coker's discharge.

Based on the foregoing, I am convinced and find that the reasons asserted for Pearl Coker's discharge on January 15, 1958, were a pretext and that the real reason therefor was her union adherence and support. Accordingly, I find and conclude that the discharge of Pearl Coker on Jannary 15, 1958, was motivated by Respondent's antiunion animus in an effort to thwart the Union's organizing efforts in the plant with knowledge of the fact that she was "heavily prounion and active in the organization attempt." By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Pearl Coker thereby discouraging membership in the Union in violation of Section 8 (a) (1) and (1) of the Act.

d. The discharge of Ruth Brooks

Ruth Brooks was hired by Walton Manufacturing Company on July 1, 1957, and was originally assigned to cutting the inside coat pockets. Prior to her employment by Walton, she had worked in the needle trades industry for approximately 9 years. In September 1957, Brooks was sent by Plant Superintendent Prosterman to the Loganville Pants plant to cut in hip pockets. She worked there for approximately 3 hours. When she returned to Walton's plant, Morris Scharff asked her whether she would like to work in the pants plant and told her to report there the next morning. She did not report as directed but instead called Mr. Hughley, who was then superintendent of the plants plant. Hughley told Brooks that during the time she had worked for him at Walton, he regarded her as a good operator and he wanted her to work for him at the plants plant. Accordingly, she reported for work at Loganville and was assigned to finishing first welts on hip pockets. From that time on, she finished first welts, cut in pockets, bagged pockets and finished down the welts. She also did all of the repairs on pockets, regardless of who had performed the operation requiring the repair. There were three other employees engaged in pocket making. Doris Stevens who finished first welts and bagged pockets. Bernice Watson who finished and bagged pockets, and Pauline Spratlin who cut in pockets. Ruth Brooks went from one job to the other in accordance with what work was needed on the back pockets at the particular time. When Ruth Brooks first started working at the Loganville pants plant, she was on a time rate — that is she was paid a $1 an hour — but later she was put on a production piece rate. She did not make production, primarily be-

cause of the repairs which she was continually required to make, and she testified that nobody made production among the employees working on back pockets. Brooks spoke to Superintendent Hughley concerning the fact that she had make up because of the repairs and he stated that he knew what she was doing and as long as he said nothing about the make up, she had nothing to worry about. About January 9, Brooks' supervisor, Edna Atha told her that she had spoken to Hughley about Brooks' makeup pay and that Hughley had said that she was not to worry, that he knew that work was short. Mrs. Brooks' testimony, in this respect, was not denied by Edna Atha, although the latter testified on behalf of Respondents.

On Thursday, January 16, 1958, Brooks was told by Mr. Hughley "I hate to tell you this but I am going to have to let you go. We've been checking over the records and we find that you have a good bit of make up. You've been here quite a while and due to the fact that you do have makeup, we are going to have to let you go." Ruth Brooks replied that she did not believe what Hughley told her because she had discussed her make up with him and he had stated that she had nothing to worry about. In reply, Hughley said, "Morris [Scharff] made me do it." She told Hughley that she knew that she was being discharged because of her union activity. Hughley then stated "Well you girls are paying too much attention to this guy that came down from the North giving you the piece rates on your job and we cannot afford to pay those rates that they pay us there."[39] Mrs. Brooks said, "Mr. Hughley, if this

[39]The reference to "this guy that came down from the North" was apparently a reference to either Union Organizer Milton Eiger who is from New York City or to the New York City address of the Union's International headquarters.

plant belongs to Mr. Rubel [Morris Scharff's cousin] and you operate it for him, how can Morris Scharff fire me," to which Hughley again replied, "He made me do it."

Hughley was not called to testify by Respondents and no testimony was offered to show that efforts had been made to obtain his attendance at the hearing. Morris Scharff testified, that on instructions given to Hughley around the end of November 1957, for the 30 days preceding Mrs. Brooks' discharge, Hughley had been reducing his work force from 38 to 35 operators to 22 operators all that was necessary to make the required production of pants. Scharff further testified that when Mrs. Brooks worked at the Walton plant, her job was the strictly mechanical one of cutting in breast pockets, and that the quality of her work was satisfactory but the quantity was not. Scharff further testified that the decision to discharge Mrs. Brooks was made by Mr. Hughley and that he (Morris Scharff) had not discussed that decision with Hughley before it was made. Edna Atha, Brooks' supervisor, who testified for Respondents did not give any reasons for Brooks' discharge and merely stated that she was discharged by Mr. Hughley. She also testified that after Ruth Brooks was terminated, Virginia Moon was hired to take Brooks' place. The payroll records of Loganville Pants Company confirm this fact. Mrs. Atha also corroborated the testimony of Mrs. Brooks that all four of the employees who worked on back pockets had makeup pay.

I do not credit Morris Scharff's testimony that the decision to discharge Mrs. Brooks was made by Hughley because: (1) contrary it is to Scharff's testimony that he, not Hughley, made the decisions for the pants plant; (2)

I do not regard Scharff as a reliable witness; and (3) Hughley was not called to deny Brooks' testimony that Hughley discharged her because "Morris made me do it." Moreover, Scharff's testimony, which suggests that Mrs. Brooks was discharged in connection with a reduction in force in the pants plant, is also not worthy of credence since that reason is wholly inconsistent with the immediate hiring of Virginia Moon as Brooks' replacement, 2 days after Brooks' discharge. Moreover, Respondents' Exhibit 7 shows that the number of employees in the pants plant was static during the period when, according to Scharff's testimony, Hughley was allegedly reducing the work force in the pants plant because of decreased production requirements.[40] I therefore do not believe that Ruth Brooks was discharged in connection with a reduction in force by Respondent Loganville Pants. Even if I believed that Brooks was discharged in connection with a reduction in force, no explanation was offered by Respondents as to why Brooks, rather than any of the other employees working on back pockets, was selected for discharge.[41] Furthermore, the discharge of Ruth Brooks for "insufficient quantity of work produced,"[42] is inconsistent with Ruth Brooks' undenied and credited testimony that Hughley regarded her as a satisfactory employee, notwithstanding her makeup pay. For all the foregoing reasons, and because Brooks, like

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[40]Respondents' Exhibit 7 shows that the level of employment at Loganville Pants was 29 for the week ending December 21, 1957, 30 for the next 4 week-period, and 31 for the following week ending January 25, 1958.

[41]The payroll records of Respondent Loganville Pants discloses that all four of the employees working on back pockets had makeup pay and that Pauline Spratlin and Doris Stevens had about the same amount of makeup pay as Ruth Brooks.

[42]This was the reason which appeared on the separation notice given to Ruth Brooks by Respondent Loganville Pants (G. C. Exh. 10).

Pearl Coker, was fired in the middle of a workweek, I do not credit any of the reasons assigned by Respondent Loganville Pants for Brooks' discharge.

The true motivation for Ruth Brooks' discharge must, therefore, be sought elsewhere. Ruth Brooks joined the Union around the latter part of November 1957 and attended all three of the union meetings which were held at the Rosebud Community House. She also attended three union committee meetings at the homes of employees. On January 10, 1958, Grace McCart was discharged, 1 day after her attendance at a meeting of the Union. On January 14, 1958, in a conversation between Grace McCart and Morris Scharff, the latter interrogated McCart regarding her attendance at the union meeting on January 9, and specifically inquired whether Ruth Brooks had attended. According to Scharff's own testimony, he knew that Ruth Brooks was one of the employees "most heavily prounion and actively engaged in the Union's organizing efforts." One day after the conversation between Grace McCart and Morris Scharff, Pearl Coker, about whom Morris Scharff similarly inquired and whom he also regarded as "heavily prounion," was fired, and a day after that Ruth Brooks was discharged. I find that all three of these firings were part of a pattern of antiunion conduct on the part of Respondents to resist and defeat the union organizational efforts by eliminating from their payroll their prounion employees. By such conduct Respondents discriminated in respect to hire and tenure of employment of Ruth Brooks, thereby discouraging membership in the Union, in violation of Section 8 (a) (3) and (1) of the Act.

E. *The layoff of employees by Respondents*

On January 24, 1958, Respondent Loganville Pants laid off some of its employees in the pants plant and on January 31, 1958, Respondent Walton laid off some of the employees in the coat division.[43] Respondents' employees were not advised that a layoff was impending before it occurred. Both layoffs were assertedly required because of a cutback in Respondents' production requirements. The General Counsel raises no issue regarding the necessity for the layoffs.

Prior to the layoffs, and apparently in an effort to discourage further discrimination against its adherents, on about January 18, 1958, the Union had sent a registered letter to Arthur Scharff (G. C. Exh. 5)[44] advising Respondents of the names of 12 employees who were members of the Union's "volunteer organizing committee" and stating that said employees had been "advised of their rights under the National Labor Relations Act . . . to join and assist the Union." Although as aforestated, there was no advance notice of the layoff, Morris Scharff testified that he regarded the letter as a demand for preferential treatment for the named employees. Whether the letter was intended as Respondents assert, to secure preferential treatment for the Union's proponents therein named, it did not accomplish its objective, for in the layoff which followed its receipt by Re-

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[43] The earlier date of the layoff in the pants plant was required because its machinery and equipment was being moved to the Walton coat plant.

[44] A copy of the letter was sent by the Union to the Board's Atlanta Regional office where charges, based on the earlier discriminatory discharges hereinbefore described, had already been filed.

spo..dents, all but 2 of the 12 were laid off. Of the two not terminated, one more was apparently intended for layoff but Respondents changed their mind for some reason not disclosed by the record.[45] Upon receipt of the Union's letter, Morris Scharff interrogated each of the employees in the coat plant named therein, as to whether they had authorized the use of their names.[46] As each acknowledged her authorization, Morris Scharff put a check mark on the letter alongside her name and later posted it on the employees' bulletin board. When posted there were check marks alongside of all the names except Jeanette Beaver's, besides those names was a dash mark, and except Lela Beaver's and Lucy Brooks, besides whose names there was no marks.[47] Scharff's explanation for the different mark alongside Jeanette Beaver's name was that although she affirmed that she authorized the use of her name on the letter, she denied that she had seen or signed it. I do not credit this explanation since the record does not establish that any of the others had either seen or signed the letter.[48] Regardless of the reason for the different mark alongside her name, Jeanette Beaver was the only employee named in the Union's letter who was not, at least, scheduled for termination and she was not laid off. Thus, in the layoff in the pants plant, Lela Beaver, the only pants plant employee named in the Union's letter, was terminated, and of

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[45]The only ones named in the letter who were not laid off were Jeanette Beaver and Mary Lou Partain. The latter was apparently also scheduled for layoff, but Prosterman changed his mind. See G. C. Exh. 19, and I. R. p. 105, l. 24-25.

[46]Apparently all but Lucy B. Brooks who was absent and Lela Beaver who worked in the pants were thus questioned.

[47]See footnote 46, *supra*.

[48]The specific conversations between Morris Scharff and each of the discharged employees will be reported hereinafter in connection with the separate consideration of each person laid off.

the 16 employees laid off in the coat plant whose previous complement was 105 employees, 9 of the remaining 11 named in the Union's letter were terminated.[49]

According to Walton Plant Superintendent Prosterman and Morris Scharff, Prosterman was advised in the early part of December 1957, to make preparations for a cutback in production of from 450 to 500 suits per day to 300 per day. Upon receipt of these instructions, in December 1957, Prosterman allegedly prepared a report containing the names of employees to be laid off, on a section by section basis, including his comments regarding the work of such employees (G. C's. Exh. 19). In the preparation of this report, Prosterman allegedly consulted with the floor supervisors in the plant regarding the skills of the various employees who worked for them, but he did not advise the supervisors of the purpose of his inquiry and did not notify the supervisors that there was to be a layoff until in the middle of January. Morris Scharff likewise testified that the supervisors were not informed of the layoff until the middle of January 1958. On January 31, 1958, just before quitting time, 16 Walton employees were notified that because of a cutback in production, they were being "permanently" laid off.

Since the reasons assigned by Respondents for their layoff varied with each employee, it will be necessary to separately consider the testimony regarding each employee whose layoff is alleged to have been discriminatorily motivated. However, certain general testimony in the record applies to all those laid off and will be reported and con-

[49]The completely disproportionate number of union adherents laid off will be more fully discussed hereinafter.

sidered first. Plant Superintendent Prosterman and Morris Scharff at first testified that the standards used for the selection of employees for layoff were, in order of importance, quality of the workmanship, quantity of production, versatility of the operator to perform other functions, and, where everything else was equal, seniority. Later in the course of the hearing, they testified that these standards were used interchangeably depending on the nature of the operation involved. Prosterman further testified that in making his selections for layoff, employees were compared only with other employees in the same section and not on a plantwide basis. On the other hand, Prosterman testified that in selecting employees to fill positions in the plant, he first considered whether anybody in the entire plant, regardless of section, could fill the vacancy.

a. The selection of Lela Beaver for layoff

Lela Beaver was hired by Respondent Loganville Pants around the middle of September 1957. She was assigned the operation of setting flies and turning corners. She was frequently so far ahead on her production that she was put on other operations. According to her undenied testimony, she was also told by Superintendent Hughley that he liked her work and that she could make production if there was sufficient work. Lela Beaver was the only employee at the pants plant who was a member of the Union's volunteer organizing committee and whose name was on the Union's letter to the Company (G. C. Exh. 5).

During the last week in January 1958, Superintendent Hughley told the pants plant employees that the plant's machinery and equipment were being moved to the Walton

plant and that all the operators who would be transferred would get a ticket on their machines. When the tickets were distributed, Lela Beaver did not receive one and she asked Hughley why. He told her that he did not know and suggested that she call Morris Scharff. She called Morris Scharff that same afternoon and asked him why she did not get a ticket for her machine. Morris replied that he did not know but that he would talk to her on Thursday. She asked him why she was not paid off if she was being laid off, and Scharff replied that if she wanted to quit, she could come down to the Walton plant and he would pay her. Lela Beaver replied that she did not want to quit, she wanted to work if there was a job for her.

The following Thursday or Friday, she visited Scharff's office and inquired regarding the reason for her layoff. She told Scharff that she thought it was because of her union activity. Scharff replied, *inter alia*, that if the Union came in, he would go out the backdoor. He then asked her how she ever got mixed up with the Union. She replied that she had known about the Union for about 8 or 9 years.

Lela Beaver's testimony regarding Respondents' satisfaction with her work and her ability to make production if there was sufficient work to be performed was not contradicted. Her supervisor, Edna Atha, testified that Lela Beaver was slow in learning and required 4 weeks in training. Edna Atha further testified that the reason Lela Beaver was not retained was that they required a girl who could work on two jobs, to set flies and tack belt loops, and another employee, Alice Lowe, had performed both operations. I do not credit this explanation for the reten-

tion of Alice Lowe rather than Lela Beaver, since Beaver regularly performed two operations, setting flies and turning corners, and also performed other operations when she was ahead on her production. There was no testimony that Beaver was incapable of tacking belt loops, an apparently simple operation. An examination of Alice Lowe's payroll record discloses that she was first employed by Loganville Pants during the week ending November 8, 1957, whereas Lela Beaver was employed during the week ending September 20, 1957. Thus Lela Beaver had greater seniority than Alice Lowe. The payroll records of Lela Beaver and Alice Lowe disclose that both had makeup pay during their entire period of employment with Loganville Pants. Beaver's makeup pay was apparently due to lack of sufficient work for her to do, a conclusion which flows from her uncontradicted and credited testimony to that effect. There was no similar testimony to explain Lowe's makeup pay, nor any testimony that Lowe was a faster producer than Beaver. Thus, even assuming that Lowe's makeup pay was also due to lack of sufficient work, there was no reason for selecting Beaver rather than Lowe for layoff on the basis of quantity of production. Moreover, there was no testimony that the quality of Beaver's work, which according to the latter's uncontradicted testimony, was "liked" by Plant Superintendent Hughley, was inferior to Lowe's.[50]

Morris Scharff also testified regarding Lela Beaver's selection for layoff. He testified that Lela Beaver was a good operator on one operation but took a long time to train.

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[50]There is no testimony given by Respondents regarding the quality of Lowe's work.

He further testified that after she had been trained, she did fair work. It was his opinion however that she was not capable of performing two operations and since they did not have a full time job for her, they dispensed with her services. I find Scharff's testimony unworthy of belief for a number of reason. In the first place, as aforestated, Beaver regularly performed two operations, setting flies and turning corners, and when caught up with her work, which was frequently, she was put on other operations. Secondly, Morris Scharff's alleged knowledge of Lela Beaver's work and his opinion regarding her lack of capability to perform two operations, must have been acquired, if at all, long after Lela Beaver's termination by Respondents, because on April 15, 1958, he stated in a letter to Respondents' counsel that "these operators (Lela Beaver and Ruth Brooks) were employed at the pants shop but I do not have accurate records as to why they were discharged, but looking at their pay and the makeup shown on the slips, it is safe to *assume* that they were inefficient operators who either replaced, or dispensed, due to the fact that the lack of work turned out" (Charging Party's Exhibit 2). Thus, although Scharff's testimony was based on personal knowledge of Lela Beaver's work, the letter shows that he has no basis for testifying to any knowledge of the work performed by Lela Beaver. Based on the foregoing, I do not believe that Scharff had any personal knowledge of Lela Beaver's work either at the time of her discharge or when he testified at the hearing. Since, as Scharff testified, the decisions for the pants plant were made by him and not Superintendent Hughley, and since according to the uncontradicted testimony of Beaver, Hughley did not know why she was not retained and suggested she talk to Morris Scharff, I am persuaded that the reasons

assigned by Scharff for the nonretention of Lela Beaver were advanced to conceal the true reason therefor.[51] My conclusion in this respect is also based on the fact, that on the record herein, Lela Beaver was at least equal to Alice Lowe in quality, production and versatility, and, therefore, on Respondents' own alleged standards for selection, Lela Beaver would have been retained on the basis of her greater seniority.[52]

b. The selection of Nellie R. Wood for lay off

Nellie Wood, an employee with 10 years experience in the garment industry, was hired by Respondent Walton on about July 29, 1957. She was assigned to perform two operations known as edge basting and edge taping and paid at the rate of $1 per hour. Subsequently, she was given a raise in pay to $1.10 an hour. According to her uncontradicted testimony, Morris Scharff told her on at least 4 or 5 occasions that he was pleased with her work. About 2 weeks prior to her selection for layoff, Plant Superintendent Prosterman told her that she was a good operator. Mrs. Wood was never criticized about the quality of her work.

Mrs. Wood joined the Union and attended all three of the Union's meetings at the Rosebud Community Schoolhouse. She also attended Union meetings at the homes of

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[51] Significantly, Beaver's makeup pay, referred to in the letter (C. P. Exh. 2) was not assigned by Respondents as the reason for her selection for layoff.

[52] I shall defer consideration of the motivation for the layoff of the members of the Union's committee until after my consideration of all the testimony regarding the reasons assigned for the selection of each for termination.

employees Lucy Brooks and Violet Ewing. In addition, Mrs. Wood solicited other employees to join the Union, and, on one occasion, visited the pants plant to solicit an employee to join. Nellie Wood was a member of the Union's volunteer organizing committee whose name was supplied to Respondents by the Union's letter (G. C. Exh. 5). On or about January 20, 1958, upon receipt of the Union's letter, Morris Scharff questioned Mrs. Wood. According to her credited testimony, Scharff asked her if she knew her name was in the letter and she replied "yes." Scharff then asked her whether she wanted her name to stay on the letter. Again she replied, "yes." Scharff then asked Mrs. Wood if she knew the consequences and she said "yes."

Mrs. Wood was one of the employees laid off by Respondent Walton on January 31, 1958. According to Plant Superintendent Prosterman, Nellie Wood's production was surplus because of the cutback in production, and, since Laverne Bowen and Johnnie Starrett had seniority over her, he selected Wood for termination. Prosterman admitted, on cross-examination, that Nellie Wood was a versatile operator and that there was nothing wrong with her work. He further admitted that if Mrs. Wood had been put on the job of either Bowen or Starrett, she could have done as well as either of them. He further testified that in considering the layoff of Nellie Wood, he did not take into consideration any employee other than Starrett and Bowen.

Nellie Wood regularly performed two operations, edge basting and edge taping. In addition, she occasionally performed other operations, and was sometimes sent to assist in the pants shop. On the other hand, Laverne Bowen only

performed one operation, edge basting, and Johnnie Starrett only performed edge taping. Thus Wood was clearly a more versatile operator than both Starrett and Bowen, and, as Prosterman testified, her work was satisfactory. Moreover, according to Respondents' payroll records, Nellie Wood had no makeup pay after October 11, 1957, whereas Johnnie Starrett had makeup pay every week in amounts varying from $3 to $11 per week. Thus, Wood was also superior to Starrett in productive capacity. According to the standards allegedly used by Respondent Walton for selection of employees for layoff, seniority was only used when all other standards, quality, production and versatility were equal. If, therefore, Respondent Walton had followed its own standards, Wood should have been retained over both Bowen and Starrett. Furthermore, the difference in seniority between Wood and Bowen and Starrett was negligible, only about 3 weeks.[53] In view of all these circumstances, and the failure to compare Wood with other employees whose work Mrs. Wood had performed and could perform, I do not credit Prosterman's testimony regarding the reason for Wood's selection for termination.

The record furnishes further ground for disbelieving the reasons asserted for Mrs. Wood's discharge. Myrtle Ewing, Wood's supervisor, testified not only that Wood's selection for layoff was based on the greater seniority of Bowen and Starrett, but also because the quality of their work was better than Wood's. Thus in respect to the quality of Wood's work, Ewing's testimony contradicts Prosterman. I do not credit her testimony in this respect.

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[53] According to Respondents' payroll records Bowen commenced working for Walton on July 10, 1957, and Wood on July 29, 1957.

Morris Scharff testified that Mrs. Wood was a good steady worker and her quality was fair but a little bit "sloppy" although not enough to lay her off for that reason. Her layoff was purely a question of lack of work. Scharff admitted that he had given Nellie Wood a raise of 10 cents an hour. In Scharff's letter to Respondents' attorneys (Charging Party's Exh. 2), he wrote in respect to Nellie Wood, "With regard to this operator, this was purely a question that a cutback had to be made in this department, due to the lack of production and the quality of her work was not equal to the standards of quality demanded on the particular job and given by the rest of the operators." Thus, Scharff's letter bases Wood's layoff on lack of quality and thereby contradicts his testimony that her work was not so bad as to require her layoff for that reason. Moreover, Scharff's testimony contradicts Prosterman's testimony regarding the satisfactory quality of Wood's work, and Wood's uncontradicted and credited testimony that Scharff had on 4 or 5 occasions told Wood that he was pleased with her work. Furthermore Scharff's testimony is inconsistent with the raise which he admittedly gave Wood. Accordingly, I do not credit Scharff's testimony regarding his reasons for the selection of Nellie Wood for termination.

In view of the shifting and contradictory reasons asserted by Respondent Walton for Wood's termination, further consideration of the record is required to ascertain the real motivation therefor. Although she was apparently one of the most active members of the Union's volunteer organizing committee and had solicited membership in the Union by Respondent's employees, Nellie Wood visited Supervisor Myrtle Ewing's home after her termination, and

asked whether she could be reinstated if she withdrew from the Union. Ewing falsely promised[54] to speak to Morris Scharff and that she would be notified by mail. Around the middle of June 1958, Nellie Wood went to the Walton plant seeking reemployment. Mrs. Wood asked for a job and told Morris Scharff that she was sorry she had signed a card for the Union and had asked to resign from the Union. Scharff told her that she had a "complaint" against Walton and suggested that she wait and talk to Mr. Joy, the General Counsel's representative who was at the Walton plant that day. In Scharff's presence, Wood told Mr. Joy that she did not want her charge to be further processed.[55] The following Saturday, June 21, Mrs. Wood again went to see Morris Scharff and was told to report to work on the following Monday, June 23. She was hired to work for the coat shop, but since there was not enough work for her in that shop, she was soon transferred to the pants shop, doing the same type of work she had previously done there. Supervisor Myrtle Ewing testified she did not know why Wood was rehired for the coat shop when there was not enough work for her there.

Mrs. Wood testified that she was sorry she had authorized the use of her name in the Union's letter to Scharff (G.C. Exh. 5), because the Union had told her she could not be fired.[56] Mrs. Wood further testified she was sorry she signed the union card because she "was afraid" "she

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[54]Ewing admitted she had no intention of requesting Wood's reinstatement for reasons which I do not credit. Significantly, Ewing did not advise Wood that her withdrawal from the Union was necessary to secure reinstatement.

[55]There is no charge by Mrs. Wood. The charges herein were all filed by the Union.

[56]Presumably for her union activity.

might have to work for Morris again some day." Wood further testified "I was sorry from the start [that she joined the Union]. I didn't want to hurt my employer. I like him. And I am still not hurt with him for nothing he done."[57] Respondents did not explain why Mrs. Wood was rehired for the coat shop when there was not enough work for her there, but denied that it was because she renounced the Union and "her charge."

On the record herein, I do not credit the shifting and contradictory reasons asserted by Respondent Walton for Mrs. Wood's selection for termination on January 31, 1958, and I find and conclude, notwithstanding Respondent Walton's denial, that Wood was rehired on June 21, 1958, because she renounced the Union and requested the withdrawal of "her charge" against Walton.

c. The selection of Evelyn Hudson for layoff

Evelyn Hudson, an employee with 8 or 9 years of experience in the needle trades industry, was employed by Respondent Walton on June 25, 1957. After trying out on various operations, she was assigned to the operation known as tacking and turning of sleeves. She worked on this operation from the time she was put on it until her

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[57]It was quite evident to me that Mrs. Wood believed that she could not remain an employee of Walton and a Union supporter at the same time and that she was most reluctant to testify against Respondents. The tears that flowed from her eyes as she testified, in my opinion, were induced by fear that Respondents would again regard her as prounion and take reprisal against her for testifying. Since she was one of the most active of the Union's workers, I do not credit her testimony quoted above, that she was sorry from the start that she joined the Union, because it was obviously inspired by fear of reprisal.

layoff on January 31, 1958. During the period of her employment, she continuously made production — that is she made more than the minimum rate and she had no makeup pay. In addition to her own operation, Evelyn Hudson was at times assigned to various operations in the sleeve section, including the jobs of sewing wigan and sewing the sleeves. She was able to perform all of the operations in the section with the exception of making sleeves. According to Hudson's uncontradicted testimony, her work in this section was satisfactory both as to quality and quantity of production.

Evelyn Hudson joined the Union around Thanksgiving Day of 1957 and attended all of the Union meetings at the Rosebud Community House. She was one of the members of the Union's volunteer organizing committee whose name appeared on the Union's letter to Respondent (G. C. Exh. 5) and she was questioned by Morris Scharff with respect to her name on the letter. According to her credited testimony, Scharff asked her "Do you realize, Evelyn, that this could work a hardship on you." Hudson replied, "yes." Scharff then asked Hudson whether she still wanted to leave her name on the letter. Again, Hudson replied, "yes."

Grace Higgins, Hudson's supervisor, testified that upon Hudson's termination, her work was taken over by two other girls, Grace Barnes and Bonnie Thompson. Higgins also testified that Evelyn Hudson frequently had makeup pay, but that statement is belied by Walton's payroll records, which show that Evelyn Hudson had no makeup pay after the week ending August 23, 1957, and in fact, only had makeup pay for 2 weeks during her entire employment

with Walton prior to her layoff.[58] Mrs. Higgins further testified that prior to her layoff, Hudson had performed more than one operation, whereas Grace Barnes and Bonnie Thompson performed only one operation.

Superintendent Prosterman testified that the reason Evelyn Hudson was laid off was that her operation was the most mechanically one in the section and could be most easily absorbed by the remaining operators in the section. Accordingly, he testified, that in order to keep retraining costs to a minimum, he decided to lay off Hudson and her work was divided between Grace Barnes and Bonnie Thompson. The implication of this testimony, that it would be necessary to train Evelyn Hudson in the operations performed by Grace Barnes and Bonnie Thompson, overlooks the fact that Hudson had and could perform the operations of both. Accordingly, I do not credit it. On the other hand, since Grace Barnes and Bonnie Thompson performed only one operation each, the decision to retain them rather than Hudson, notwithstanding the latter's greater versatility, is contrary to the standards allegedly applied by Respondent Walton in selecting employees for retention.[59] In view of the foregoing, I do not credit the reasons assigned by Respondent Walton for Hudson's selection for layoff.

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[58] Accordingly, I do not credit Higgins' testimony which implies that Evelyn Hudson was laid off because of insufficient production.

[59] According to Supervisor Higgins, the allegedly greater versatility of Mary Lou Partain was the reason for Pearl Coker's selection for discharge. Moreover, notwithstanding that Hudson was one of the oldest in the plant in respect to seniority, seniority was not considered in selecting Hudson for layoff. However, in the layoff of Nellie Wood, hereinabove discussed, Respondent Walton allegedly selected her for layoff on the basis of seniority, although the difference in length of service was negligible.

d. The selection of Violet Ewing for layoff

Violet Ewing, one of the first employees employed by Respondent Walton, started to work on June 28, 1957. Prior to that, she had worked for approximately 2 years in the needle trades industry. When first employed by Walton, she had no regular assigned operation and was put to work at various jobs, including making pocket welts, trimming collars, marking collars, basting collars, cutting pockets and sewing pocket facings. Later, Violet Ewing was assigned the regular operation of making pocket welts and pocket facings. Another employee, Margaret Britt, also made pocket facings and pocket flaps. Ewing testified credibly that none of the supervisory employees of Respondent Walton ever told her that her work was unsatisfactory or that she was not producing enough work. Violet Ewing was laid off by Respondent Walton in the January 31, 1958, layoff.

Violet Ewing joined the Union before Thanksgiving of 1957 and attended all three meetings at the Rosebud Community House. She spoke about the Union to other employees in the plant, and, although she did not specifically solicit membership, she did talk favorably about the Union. She was one of the members of the Union's volunteer organizing committee. Her name was on the letter sent by the Union to Scharff in January 1958 (G. C's Exh. 5). She was questioned by Morris Scharff regarding her authorization of the use of her name in the letter. She told him she had authorized its use. Scharff asked "if she still wanted to go along with them [the Union]." She replied in the affirmative.

Upon the termination of Violet Ewing, her job of making pocket welts was assigned to Margaret Britt, an employee with less seniority than Ewing. After the layoff, the making of pocket facings, which theretofore had been performed by Violet Ewing and Margaret Britt, was assigned to a girl named Madeline who theretofore had done small odd jobs in the collar section. Plant Superintendent Prosterman testified that in selecting Violet Ewing for layoff, he had compared her work only with that of Margaret Britt and decided that because the latter's operation was more difficult than Ewing's, he would retain Britt. Prosterman admitted that he didn't compare Ewing's operation in respect to difficulty or anything else with that performed by Madeline, the girl who took over pocket facings from both Britt and Ewing, and he offered no explanation for his failure to do so. In view of Respondent Waltons failure to explain why it did not consider and compare Ewing for retention with Madeline, Prostermans reason for retaining Britt, an employee with lesser seniority than Ewing, does not persuade me that that was the reason for Ewing's selection for layoff. Significantly, on October 7, 1958, Ewing was rehired by Respondent Walton as a utility operator, which was defined as an operator with the skill necessary to perform many operations in the plant. At the time she was rehired, according to the uncontradicted and credited testimony of Violet Ewing, Prosterman told Supervisor Grace Higgins that Violet Ewing was a good operator and would not give her any trouble. Because of the foregoing and my general lack of faith in the credibility of Prosterman to which I have heretofore adverted, I do not credit Respondent Walton's reasons for selecting Ewing, an experienced, senior and competent operator, for layoff.

e. The selection of Bonnie Hamilton for layoff

Bonnie Hamilton was hired by Respondent Walton on July 3, 1957. She was regularly assigned to the operation of sewing in welts (breast pockets), lower pockets and patch pockets. When there was not enough work to do on her regular operation, she was assigned to various other operations, to wit: sewing flap pockets, bar tacking, side seaming and back seaming. Plant Superintendent Prosterman, Morris Scharff and Supervisor Gerald Carter all testified that her work was satisfactory. Prosterman further admitted that she always made production.

Bonnie Hamilton joined the Union and attended 2 or 3 of the meetings held at the Rosebud Community House. In addition, she also attended union meetings at the home of employees Lucy Brooks and Violet Ewing, and one such meeting was held in her own home.[60] Bonnie Hamilton was also a member of the Union's volunteer organizing committee and her name was on the letter received by Respondents from the Union (G. C. Exh. 5). Upon receipt of the letter, Morris Scharff asked Bonnie Hamilton whether or not her name belonged on the letter. She replied that it did. Scharff then commented "well all right," and put a check mark alongside her name.

Another Walton employee, Lucille Yancey, also per-

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[60]The testimony as to whether the meetings at employees' homes were held prior to or after the layoff of January 31, 1953, is contradictory. Since there is no question about Respondent Walton's knowledge of the union activities of the employees involved in the layoff who are alleged as discriminatees herein, there is no necessity for any findings as to when the meetings were held.

formed the operation of sewing in welts.[61] Of the two, Bonnie Hamilton had seniority by a few days. On January 31, 1958, Hamilton was laid off and Yancey was not. Hamilton testified without contradiction that because Yancey did not like to do repair work, even that required by Yancey's own errors, Hamilton was called on by Supervisor Carter to do all the repair work on their common operation. In this connection, Walton employee, Floorworker Nellie Hood, testified without contradiction that on quite a few occasions, she had been instructed by Carter to give work to Hamilton for repair which originally had been worked on by Yancey, and that in so doing Carter said, "This is some more of Lucille's [Yancey] sorry doings." Hood further testified without contradiction, that Carter never said anything about Hamilton's work. The implication of this credited testimony is that Hamilton's work was better in quality than Yancey's and that the latter was not as cooperative as Hamilton in the matter of doing repair work.

Plant Superintendent Prosterman testified that the reason Hamilton and not Yancey was laid off was that the latter "had a greater potential and was a better operator." Supervisor Carter testified, "we felt that Lucille's [Yancey] quality was a *little better*." [Emphasis added.] He further testified that no other factors were involved in the decision to lay off Bonnie Hamilton. Morris Scharff testified that the layoff of Bonnie Hamilton was necessary because of the cut back in production but he gave no testimony as to why Hamilton rather than Yancey was selected. However, in his letter to Respondents' counsel (Charging Par-

[61] This is not the Lucille Yancey who is alleged in the complaint as a discriminatee, but another employee with the same name.

ty's Exh. 2). Scharff wrote that Yancey did "*much better* quality work and was much more versatile." Prosterman testified that Hamilton's work was not compared with any employee in the plant other than Yancey. Scharff testified that the layoff of another employee instead of Hamilton was not considered because there was "no assurance that Bonnie Hamilton would be able to do that job" and because regardless of the job she "would be put on, there would be the question of retraining the operator [Bonnie Hamilton]."

On the foregoing record, I do not credit Respondent's wholly subjective testimony regarding the reasons for selecting Bonnie Hamilton for layoff. The testimony regarding the degree in which Yancey's work was allegedly better was inconsistent, varying from Prosterman's "greater potential" and Carter's "a little better" to the statement in Scharff's letter, "much better." Moreover, there was no testimony by Respondent Walton to support the statement in Scharff's letter, that Yancey's allegedly greater versatility was the reason for her retention. This lack of consistency and shifting of reasons for Hamilton's layoff merely confirms my general disbelief in the credibility of Respondent's witnesses. The uncontradicted and credited testimony of Floorworker Nellie Hood persuades me that Yancey's work was not better than Hamilton's. Moreover, notwithstanding that Hamilton was an admittedly satisfactory and versatile employee who regularly made production and who performed, *inter alia*, side seaming while employed by Respondent Walton, a new employee and not Hamilton was hired by Respondent when a vacan-

cy in that operation occurred after the layoff. In addition to all the foregoing reasons, I am impelled to the conclusion to disbelieve the reason asserted by Respondent for Hamilton's selection for layoff, because of the failure of Respondent to compare Hamilton with other employees in the plant whose operations she occasionally performed since Respondent admittedly considered all employees in the plant in the filling of vacancies.[62] And finally, I am led to this conclusion by Respondent's failure to consider Hamilton's greater seniority.

f. The selection of Frances Elizabeth Powell for layoff

Frances Elizabeth Powell (who will be referred to herein as Johnson, her maiden name used when employed by Walton) was hired by Respondent Walton on or about July 1, 1959. She originally worked under the supervision of Gerald Carter, but just before the discharge of Lucille Yancey, hereinbefore described, she was transferred to the lining section under Supervisor Grace Higgins. Following Mrs. Yancey's discharge, Johnson was assigned to work at the operation previously performed by Yancey and was given a raise from $1 to $1.15 per hour. Plant Superintendent Prosterman complimented her work in the lining section. Johnson was paid on a straight time rather than piecework basis and thus had no makeup pay. Johnson was never criticized for her work.

Johnson signed a card for the Union and was a member of the Union's volunteer organizing committee. Her name

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[62]Her selection for such a job would have required no retraining, contrary to Scharff's testimony.

was among those on the letter sent to the Respondents by the Union (G. C. Exh. 5). She was interrogated by Morris Scharff in respect to the presence of her name on this letter. When she told Scharff that she had authorized it, he said, "Well, if that's the way you want it," and placed a check mark alongside her name. Johnson was laid off on January 31, 1958. She was never rehired.

Plant Superintendent Prosterman, first testified that Walton employed five regular and one part-time employee in the lining section. He named the five as Annie Brooks, Imogene Meeks, Odelle Barnes, Mary Barnes and Elizabeth Johnson, and the part-time employee as Mary Lou Partain. Prosterman further testified that because of the cutback in production, he had to reduce the force by two operators and since Mary Barnes and Frances Johnson were the least qualified in the section, they were selected for layoff. His testimony in respect to the number of employees in the lining section was subsequently contradicted both by his own later testimony and by his layoff report (G. C. Exh. 19) which showed Mary Barnes to be employed in the sleeve section. Prosterman further testified that Johnson had makeup pay, which I likewise do not credit since Johnson's payroll record shows no makeup and, in fact, she was working on a straight time rate of $1.15 per hour. Prosterman further testified that at the time of the layoff, Johnson was in training for the job she was then performing, and that from his observation, she was the least competent operator in the section, the least able to produce quality work. He also testified that Johnson could not perform the other jobs in the section as well as the other operators could perform Johnson's job. Prosterman testified that Respondents gave Johnson a raise of 5 cents an hour

(from $1.10 to $1.15 per hour) at the time of her transfer to the lining section as "an incentive" and "as a mark of sincerity" that Respondents were trying "to better her status." His testimony regarding the amount of the raise is contradicted by Johnson's payroll record which shows that the raise was 15 cents per hour (from $1.00 to $1.15 per hour). Although Prosterman admitted that he complimented Johnson and that he did not tell her that her work was not of good quality, he maintained nevertheless that he considered Johnson "a poor operator." However, Respondents' witness Imogene Meeks, who performed the operation following Johnson's testified that they [Meeks and Odelle Barnes] had no trouble with Johnson's work in the section. In view of the foregoing, including the admission by Prosterman that he complimented Johnson's work, the raise given to Johnson and Meeks' testimony, I do not credit Prosterman's testimony regarding the quality of Johnson's work.

Supervisor Grace Higgins testified that Johnson was slow in production and poor in quality and did not put the fullness in the proper places, but she conceded that Johnson's work was better than that of Lucille Yancey. Higgins further testified that Johnson was learning the operation which normally takes about 6 weeks. Since Higgins did not contradict Johnson's testimony that she was never advised of either poor quality or production, and Higgins' testimony as to Johnson's quality is contrary to that of Respondent's witness Meeks, I do not credit Higgins regarding the poor quality or quantity of Johnson's work.[63]

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[63] I have, in prior sections of this report, indicated my lack of faith in the reliability of Higgins' testimony.

Morris Scharff testified that Frances Johnson was laid off because there were two other topnotch operators in the section who could easily absorb the purely mechanical work that Johnson was doing. He also testified that Johnson was coming along fairly well with her training, that her work was satisfactory and that as far as he was concerned she did not do a lot of bad work. Thus, Scharff's testimony contradicts both Prosterman and Higgins regarding the quality of Johnson's work. But even Scharff's testimony regarding the reason of Johnson's selection for layoff is unreliable and I do not credit it. In his letter to Respondents' counsel (Charging Party's Exhibit 2), Scharff wrote "Frances Johnson . . ., after several months, she has shown practically no improvement." This directly contradicts his testimony that Johnson was coming along fairly well with her training.

An additional reason exists for my disbelief of the reasons assigned by Respondent Walton for Johnson's selection for layoff. Shortly after Johnson's layoff, Annie Brooks, who sewed the backs and yokes in the lining section, was fired by Walton because of poor quality and lack of production.[64] Prosterman testified that the trouble with Annie Brooks' work was "fairly constant." In spite of that, Annie Brooks was not laid off in the January 31, 1958, layoff, her name was not in Prosterman's report made in preparation for the layoff, and although both worked in the same section, the alleged area of competition used by Respondents in selecting employees for the layoff, no comparison was made of

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[64] The date of Brooks' discharge does not appear in the record. However, according to Prosterman's testimony, Annie Brooks was replaced by Mary Barnes and the latter's payroll (G. C. Exh. 30-B) reveals that she was rehired on March 6, 1958.

Johnson vis-a-vis Brooks nor any explanation offered as to why Brooks was not laid off instead of Johnson.

In view of the foregoing, I do not believe Respondent Walton's reason for Johnson's selection for layoff.

g. The selection of Ida Harper for layoff

Ida Harper was hired by Respondent Walton on July 17, 1957. She was assigned to the operation of felling the lining to the coat and worked on a machine known as the Lewis blind stitch machine. The machine frequently did not function properly and required repairs. When the machine was functioning properly and there was sufficient work for her to do, Ida Harper was able to perform her operation on 80 to 90 coats per hour. However, there were frequently periods when she did not have enough work to do. When this occurred, she was occasionally assigned to assist Inspector Sarah Elizabeth Sanders, or was told by her supervisor, Myrtle Ewing, that she had no work for her to do and to take time out and go to the washroom. Harper was never told that her work was unsatisfactory. The operation which Ida Harper performed at the Walton plant was that following the operation of basting the lining to the coat performed by Charlotte Finley. Harper testified without contradiction that her job was more difficult than Finley's, her machine was more intricate than the one operated by Finley, her machine used a bobbin whereas Finley's did not, and that her operation required changing the color of the thread to match the coat color, whereas on Finley's job, the thread used was always the same color. Notwithstanding this, Harper was always able to keep abreast with

the flow of work which came to her from Finley, except when she was taken off her job to do something else or her machine was not functioning properly. Ida Harper was one of Walton's employees who were laid off on January 31, 1958, and she was never rehired. Finley was not one of those terminated.

Prior to the layoff, Ida Harper had joined the Union and had attended the Union's meeting at the Rosebud Community House on January 9, 1958. She was also a member of the Union's volunteer organizing committee. Harper was questioned by Morris Scharff about the use of her name on the Union's letter which advised Respondents of the names of the members of the Union's committee. In response to his query, she told Morris Scharff that she had authorized the use of her name. Scharff asked Harper whether she wanted her name to stay on the letter and she replied that she did. Morris then stated, "You know what this leads up to."

A number of reasons were asserted by Respondent Walton for Harper's selection for layoff. These were, according to Plant Superintendent Prosterman: (1) Harper could not produce properly and it took her 6 to 8 hours per day to do the job which should take only 4; (2) she had a bad attendance record; (3) she had a poor general attitude; (4) her makeup record was bad; (5) she did not "take kindly" to her supervisor's request for increased production; (6) she played around and spent a lot of time in the washroom; and (7) she talked excessively. Prosterman testified that

Harper had been warned about these matters.[65] The reasons assigned by Prosterman for Harper's selection for layoff will be considered seratim.

1 and 4. Harper's failure to make production is confirmed by her payroll record which discloses that she continually had makeup pay during her employment by Walton. However, Harper's makeup pay does not establish Prosterman's assertion that she "could not produce properly" for as Prosterman testified, she was capable of rapid work. Her makeup pay was equally attributable to the frequent malfunctioning of Harper's machine or the insufficient work available for her to perform, or both, in respect to which I credit Harper's uncontradicted testimony. Moreover, in Prosterman's report to Morris Scharff in preparation for the layoff (G. C. Exh. 19), not only was makeup pay not asserted as a reason for Harper's selection for termination, but the only reason stated therefor was, "Insufficient work to be done by Geneva [Harris] better and older operator seniority." This, of course, corroborates Harper's testimony regarding lack of sufficient work to keep her occupied full time and explains her makeup pay. For all the foregoing reasons, including the failure of General Counsel's Exhibit 19 to refer to Harper's inability to produce or her makeup pay as a reason for her selection for layoff, I do not believe Prosterman's testimony that inability to produce sufficiently or makeup pay was a reason for Harper's selection for termination.

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[65] I understand Prosterman's testimony to mean that he instructed Harper's supervisor to "warn" Harper. In view of Prosterman's apparent lack of personal knowledge, his testimony regarding the alleged warnings is evidently based on hearsay. Prosterman admitted that Harper had never been warned regarding absenteeism.

2. I have compared the number of hours worked by Harper with those worked by other employees of Respondent Walton who were not terminated, and the payroll records show that Harper worked more hours than many of the retained employees. In view of Respondent Walton's admission that Harper was never told that she was excessively absent and the fact that Walton's records do not disclose that she was, I do not credit Prosterman's testimony that absenteeism was a reason for Harper's selection for termination.

3 and 5. The only specific testimony, if any, by Prosterman regarding Harper's alleged "poor general attitude" was his statement that she did not "take kindly" to her supervisor's request for increased production. Since I credit Harper's testimony that she was never told she was doing insufficient work and her uncontradicted testimony that she kept abreast of all the work that came to her from Charlotte Finley and that there was insufficient work to keep her occupied all the time, I do not believe either that Harper was requested to increase her production or Prosterman's vague testimony regarding her "poor general attitude."

6 and 7. Since none of the other reasons (that she played around, spent a lot of time in the washroom and talked excessively) were alluded to in Prosterman's report to Scharff

in preparation for the layoff, I do not believe that these were the reasons for her layoff and I do not credit them.[66]

Harper's supervisor, Myrtle Ewing, first testified that Harper was discharged, not laid off.[67] Ewing testified that the reasons for Harper's discharge were, a "cumulation of bad work," that Harper was immature and would not settle down and work, and absenteeism. Ewing further testified that she spoke to Harper daily about her bad work. On cross-examination, she testified that her daily talks with Harper were not about "so much bad work, it was just a lack of work." I do not credit Myrtle Ewing's testimony in any respect in which it conflicts with that of Ida Harper. Ewing's testimony that Harper was discharged, not laid off, is contrary to the entire record which shows that Harper was one of 16 employees laid off on January 31, 1958. Her testimony that Harper's alleged discharge was for "bad work" asserted a reason for her termination not included in the many advanced by Prosterman. In view of the absence of any specificity regarding the alleged nature of the bad work, I do not credit Ewing's testimony that Harper's alleged "bad work" was a reason for Harper's selection for layoff. As aforestated, the record does not sustain Ewing's

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[66]Harper's testimony, that she was frequently told by her supervisor that there was no work for her to do and to take time out and go to the washroom was not controverted by the supervisor although the latter testified for Respondent Walton.

Prosterman was asked why, if Harper was such an unsatisfactory employee, she was not fired before the layoff. His explanation, that production was needed from Harper's section and that her machine was difficult to learn, I find implausible, in view of the lack of sufficient work to keep Harper busy and the fact that Walton had in its employ, an allegedly experienced operator, Geneva Harris, to whom this operation was assigned after Harper's layoff.

[67]She subsequentiy contradicted this by saying that she did not know whether Harper was discharged or laid off.

testimony that Harper was excessively absent. Moreover, since I credit Harper's testimony that she was never told either that her work was unsatisfactory, that her work attitude was poor, or that she loafed, I do not credit Ewing's testimony that she spoke to Harper daily about her bad work or lack of work.[68] Accordingly, I do not credit Ewing's testimony regarding the records for Harper's termination.

Morris Scharff testified that Harper was a completely unsatisfactory employee, both as to quality and quantity of work and conduct, and should have been discharged not laid off. However, Scharff offered no explanation as to why Harper had not been discharged before the layoff. As noted above, insofar as Harper's alleged poor quality was concerned, Scharff's testimony asserts a reason for layoff not advanced by Plant Superintendent Prosterman. Moreover, Scharff's letter to Respondent's counsel (Charging Party's Exhibit 2) did not assign as a reason for her layoff either bad quality or bad conduct. The letter stated:

> Ida Harper had constantly shown makeup pay, with very little signs of improvement, even after many months of training.

Accordingly, I do not credit Scharff's testimony that either poor work quality or bad conduct was a reason for Harper's selection for layoff.[69]

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[68] As aforestated, Ewing did not deny Harper's testimony that Ewing told Harper to go to the washroom when there was insufficient work for her.

[69] For the reasons hereinabove stated in connection with Prosterman's testimony, I also do not believe that her makeup pay was a reason for Harper's termination.

In addition to the foregoing, the record discloses an additional ground for disbelieving the reasons asserted by Respondent Walton for Harper's selection for layoff. Superintendent Prosterman testified that in selecting Harper for layoff, her work was compared only with that of Gereva Harris and no one else. No reason was offered for not comparing Harper with other employees in the section in which she worked.[70] Thus, no reason was given for not comparing Harper with Finley who, on the basis of Harper's uncontradicted testimony, performed a less difficult operation in the section than Harper did. The failure to compare Finley with Harper is especially significant in view of the fact that a short time after Harper's layoff, Finley was assigned to perform Harper's operation of working on the Lewis blind stitch machine, an admittedly difficult machine to learn, even though Finley had no prior experience on this machine. An examination of Finley's payroll record discloses moreover that she was junior in length of service to Harper and also frequently had makeup pay when she was not working on a straight-time basis. I therefore regard Respondent's failure to compare Harper with Finley, and the discredited and inconsistent reasons asserted for Harper's selection for termination, to be indicative of a determination to dispense with her services for a reason or reasons other than those asserted by Respondent Walton.

h. The selection of Pauline McGee for layoff

Pauline McGee was hired by Respondent Walton on Aug-

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[70]As aforestated, Prosterman had testified that in selecting employees to be terminated, comparisons were made on a section by section basis.

ust 12, 1957. During the first 3 months of her employment, her job was basting the hems and linings of coats. When Walton changed from full lined to half lined coats, McGee was assigned to the operation of basting the hems and turning the vents. Mrs. McGee received no complaints from Respondent's supervisory staff that her work was either insufficient in quantity or inadequate in quality. On the contrary, she was told by Plant Superintendent Prosterman that she was doing "fine."

McGee signed a card for the Union and attended two union meetings at the Rosebud Community House, the last one being January 9, 1958. She also solicited employees in her car pool to sign up with the Union. She was one of the Union's volunteer organizing committee whose names were on the letter sent to Respondents by the Union. McGee was questioned by Morris Scharff as to whether she had authorized the use of her name on the letter (G. C. Exh. 5). She told Scharff that she had. Scharff then asked McGee, "Do you know what that means?" She replied, "Yes sir." She was laid off on January 31, 1958. Since then, she has applied on several occasions for reemployment by Walton but was not rehired, notwithstanding that Walton has since hired new and inexperienced employees.

Plant Superintendent Prosterman testified that he selected Pauline McGee for termination because her job was similar to the job performed by Charlotte Finley and because Finley showed greater potential, progressed more rapidly and earned more money than McGee. Prosterman testified that Charlotte Finley's operation was lining basting and that both McGee and Finley used a basting machine. He further testified that he decided to retain Finley because

she had seniority over McGee. Prosterman admitted that the choice between McGee and Finley was close and that McGee was capable of doing either job. When asked what he meant by his testimony that Finley had progressed more rapidly, Prosterman testified, "Both of the girls were showing makeup at the time" but "Charlotte Finley had shown greater progress — she earned more money on the job." He further stated that he based Finley's alleged greater rate of progress from the time both started on the new operation.[71] Prosterman admitted that in addition to doing basting, McGee's job required her to turn up and measure vents, whereas Finley did not have to do anything other than the basting operation. Moreover, Prosterman admitted that after McGee's layoff, it was necessary for Geneva Harris to assist Charlotte Finley in performing McGee's operation "while Charlotte Finley was learning the operation — in order to maintain production until Charlotte Finley got to the point where she could handle it all . . ." He further testified that "a certain amount of training was required to bring Charlotte Finley up to production," and that such "training was required not to learn the operation, but to gather speed," since "Charlotte Finley had done this work previously."

I place no credence in the reasons asserted by Prosterman for McGee's selection for layoff. His subjective testimony that Finley "had shown greater progress" and "greater potential" is unsupported by any credible specific testimony, and is contrary to the testimony that Finley, notwithstand-

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[71] I assume from this testimony that Prosterman was referring to the time Walton started to make half lined coats. Prosterman testified that this took place shortly after he started to work for Walton, after Labor Day, 1957.

ing her alleged performance of McGee's operation before the layoff, required training and assistance thereon to maintain Walton's reduced production requirements.[72] Moreover, Prosterman's testimony, that Finley "earned more money on the job" than McGee, is refuted by a comparison of Respondent Walton's payroll records for these employees. These records disclose that McGee's gross pay for the last quarter of 1957 were $439.8[illegible] whereas Finley's gross earnings for that period were $3[illegible]3.49.[73] Similarly, in the 6 succeeding weeks shown on Respondent Walton's 1958 payroll records, McGee's gross earnings were $231.20 whereas Finley's were $223.15.[74] And, in the last 4 weeks before McGee's termination a period during which McGee and Finley both worked almost exactly the same number of hours,[75] McGee earned $174.60 to Finley's $170.21. On the foregoing documentary record, Prosterman's testimony that Finley earned more money than McGee is without foundation and I do not credit it. As aforestated, Prosterman admitted that McGee was capable of performing Finley's operation. Since McGee's job required an additional operation (the turning and measuring of vents) not performed by Finley, it was to that extent, more difficult to

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[72] As aforestated, Respondent's reasons for the layoff of employees was a cutback in its production requirements from 450 to 300 suits per day.

[73] I selected this period for comparison to conform with Prosterman's testimony that he compared the rate of progress of these two employees from the time of the changeover to half lined coats. During this period McGee worked 52½ more hours than Finley. However, she earned $66.14 more than Finley. Thus, Prosterman's unqualified testimony that Finley earned more money, is untrue.

[74] During this period McGee worked 4½ hours more than Finley and earned $8.05 more than the latter.

[75] McGee worked 160¼ hours. Finley worked 160 hours.

perform with necessary production speed than Finley's.[76] Accordingly, one would assume that Prosterman would have retained McGee rather than Finley.[77] Significantly, Prosterman's report to Morris Scharff in preparation for the layoff (G. C. Exh. 19), asserts as the only reason for McGee's selection for layoff, Finley's "seniority." For all the foregoing reasons, I do not credit Prosterman's subjective testimony that Finley showed "greater potential" and "progress" than McGee, nor that Finley earned more money than McGee, and I do not believe that these were the reasons for McGee's selection for layoff.

I also do not believe that Finley's greater seniority was the real reason McGee was selected for layoff.[78] Allegedly, seniority was only followed by Respondents in their layoff selections when all other factors were equal. The record herein discloses that seniority was frequently disregarded by Respondents in making their layoff selections. Thus, although Finley had less seniority than Ida Harper who worked in the same section on a more difficult machine, Finley was retained and Harper was terminated. Moreover, notwithstanding that selections for termination were allegedly made on a section by section basis, no explanation was offered by Respondents for their failure to compare Harper with Finley. Furthermore, as hereinabove noted, seniority was also disregarded in the selection of Evelyn Hudson, Violet Ewing and Bonnie Hamilton for layoff. According to Prosterman, one of the considerations which motivated his selections for layoff, was the need

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[76] This was demonstrated by Finley's subsequent inability to cope with McGee's job without training and assistance.

[77] Prosterman asserted the greater difficulty of Margaret Britt's job as his reason for retaining her rather than Violet Ewing, an employee with greater seniority.

[78] The difference in their length of service was 3 weeks.

for keeping the cost of training employees to a minimum. In the instant case, McGee, who admittedly was capable of doing Finley's job, would not have required training whereas the latter did need training and assistance to cope with McGee's. From this, it would appear that Prosterman would have disregarded seniority as as he did in other cases. Accordingly, I do not believe that seniority was the true reason for McGee's selection for termination.

My refusal to credit the reasons assigned by Prosterman for McGee's selection for termination is further based on the fact that although McGee was admittedly a satisfactory employee, she was never rehired although she applied to Respondent for work, and yet new employees with no prior experience were hired by Walton after the layoff. Prosterman testified that he did not rehire McGee because none of the vacancies required her skill. He admitted, however, that the new employees had never worked in clothing factories or made coats. Nevertheless, Prosterman maintained that the new employees' skills could be better applied than Pauline McGee's. I find this testimony incredible and I refuse to believe it.

Supervisor Myrtle Ewing testified that McGee was laid off only because of the greater seniority of Finley. I have hereinabove set forth my reasons for disbelieving that seniority was the reason for McGee's termination. Morris Scharff testified that the reason was that Finley was a better operator and did better work than McGee. Thus, Scharff's testimony adds an additional reason for McGee's selection for layoff (Finley's alleged better quality) to which neither Prosterman nor Supervisor Ewing alluded. For that reason and because I do not regard Scharff as a

credible witness generally, I do not believe that Finley's alleged better quality was the reason for McGee's selection for layoff. Scharff also testified that he did not transfer McGee to another job because it would have required retraining her. Of course, it would not have required retraining for McGee to take over Charlotte Finley's job.

On the foregoing record, and my general lack of faith in the credibility of Prosterman, Myrtle Ewing and Morris Scharff, I cannot and do not credit the reasons assigned by Respondent Walton for McGee's selection for layoff.

i. The selection of Nellie Hood for layoff

Nellie Hood was employed by Walton on July 1, 1957. Her job was to mark the welts and patch pockets, match the pockets with the fronts of the coat and carry bundles to the girls. After Hood had been employed by Walton for about 3 months, she was assigned to matching the backs with the fronts of coats and continued to carry bundles. When first hired, Hood was paid $1 an hour, but beginning with the week ending September 13, 1957, she was given a raise to $1.10 an hour. Hood was never told that ther work was unsatisfactory by any of Respondent's supervisors or officials.

Nellie Hood signed a Union card and was a member of the Union's volunteer organizing committee whose names were sent to Scharff by the Union (G. C. Exh. 5). During rest breaks and lunch periods, Hood spoke favorably about the Union to the employees in the plant. Morris Scharff questioned Hood as to whether she authorized the use of her name in the Union's letter, and when she replied in

the affirmative, he said, "alright" and put a check mark along side her name.

According to Plant Superintendent Prosterman, Nellie Hood was selected for layoff because her work did not require much skill, and, in view of the cutback in production, it was felt that her work could be absorbed by other employees. He further testified that following Nellie Hood's layoff, her work was partially performed by Gerald Carter, her supervisor, and partially by other operators in the section whenever they had time to spare. Supervisor Carter testified that after Hood was laid off, her job of marking the flaps was assigned to Francis Green and that of carrying of bundles was done by him.

There was no testimony that in selecting Hood for layoff, she was compared with any other employee of Walton. On the other hand, there was testimony that there were other unskilled jobs in the plant, e. g., Sarah Sanders was an inspector and floor girl, Francis Green marked and trimmed undercollars, and other employees did trimming, basting pulling and inspection.[79] No reason was given for not comparing Hood with such other unskilled jobs in the plant and there was no testimony that Hood was either incapable of performing such unskilled work or that her work, while employed by Walton, had been unsatisfactory. Moreover, a comparison of Walton's payroll records for Francis Green and Nellie Hood discloses that Hood had seniority of almost 3 months over Green, who first started work for Walton about September 26, 1957.

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[79] According to Respondent's Exhibit 9, Grace Johnson was hired for the job of trimming, basting pulling and inspection on June 27, 1958.

In view of the complete absence of any testimony explaining the method or means by which Hood, rather than one of the other unskilled employees, was selected by Respondent for layoff, and the fact that Hood, an admittedly satisfactory employee had seniority over Francis Green who took over part of Hood's work, and on the entire record herein, I do not believe Respondent's asserted reason for Hood's selection for layoff.

F. *Concluding findings in respect to the selection of the alleged discriminatees for layoff*

My conclusions herein before set forth, that the reasons asserted by Respondents for the selection for layoff of Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood, are unworthy of belief and discredited, are not, of course, the equivalent of a finding that said employees were so selected by reason of their union adherence and or activity. However, the record herein provides ample support for the latter conclusion. As I have already found, the Respondents were admittedly hostile to the Union's organizational efforts and upon its inception, took active steps to prevent its success. These steps included: (1) a letter to their employees outlining new benefits, paid vacations and holidays which employees could enjoy without paying "dues or initiation fees to any outside union"; (2) following a union organizer while she was engaged in soliciting membership in the Union; (3) taking down the license numbers of the organizers' cars; (4) antiunion speeches to Respondents' employees in which Morris Scharff, Respondents' principal operating official,

threatened to terminate his association with Respondents if the Union became the employees' representative; (5) interrogation of employees regarding attendance at union meetings and the creation of the impression that Respondents had engaged in surveillance of union meetings by stating that Respondents knew everybody who attended; (6) the threat, conveyed by a supervisor to an employee, that Respondents would close down the plant rather than work with union labor; (7) the threat by a supervisor to an employee to "shut up talking about the Union" "if you don't want to dig your own grave"; (8) the threat conveyed by a supervisor to an employee that Respondents would discharge an employee, no matter how competent, if she joined the Union; (9) the promulgation of a rule at the pants plant against talking about the Union, not limited to working hours; (10) the threat by the pants plant superintendent that he would cease attempting to get work for the employees, if they persisted in talking about the Union; and (11) the discharge of Lucille Yancey, Grace McCart, Pearl Coker and Ruth Brooks, because of activity in support of the Union.[80] Having thus disposed of the threat posed by the employees whom Respondents regarded as the Union ringleaders, the Respondents were then faced with a new threat, the Union's letter naming a dozen members of the Union's volunteer organizing committee. Thereupon, Respondents ascertained by interrogation that at least all but one of the employees named in the letter were steadfast in their union adherence, and seized upon the opportunity presented by the contemplated layoff to get rid of

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[80]The fact that Jeanette Beaver and Mary Lou Partain, prounion employees, were not likewise fired does not exculpate Respondents from the charge of discrimination as to those discharged. *N. L. R. B. v. Link Belt Co.*, 311 U. S. 584, 602; *N. L. R. B. v. W. C. Nabors Co.*, 196 F. 2d. 272, 276 (C. A. 5).

the members of the Union committee. In the layoff which followed, all but two of the dozen union committee members were laid off,[81] and, although new and inexperienced employees were subsequently hired by Respondents, many of those laid off were never recalled. The disparate number of union committee members laid off in the coat plant in relation to the total number laid off in that plant and the total employment therein, is in itself, although not conclusive, persuasive evidence of discrimination. *N. L. R. B.* v. *W. C. Nabors*, 196 F. 2d 272, 275-6 (C. A. 5); *N. L. R. B.* v. *Chicago Steel Foundry*, 142 F. 2d 306, 308 (C. A. 7); *N. L. R. B.* v. *Sifers*, 171 F. 2d 63, 65-6 (C. A. 10); *Harold W. Baker*, 71 NLRB 44, 59. Thus, in a 15 percent reduction in force in the coat plant,[82] 82 percent of the Union's committee in the plant[83] were laid off. In addition, Lela Beaver, the only union committee member in the pants plant, was also laid off. I am asked to believe that this almost complete elimination from employment of the members of the union's committee is pure coincidence. I find it incredible, not only because of its mathematical improbability,[84]

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[81] All but one, if Jeanette Beaver whom Respondents apparently placed in a different category, is excluded. See I. R. p. 114, l. 10-23.

[82] Sixteen employees out of a total complement of 105 were laid off.

[83] Nine union committee members out of eleven who worked in the coat plant were laid off. If Jeanette Beaver is excluded from consideration as a union committee member (See fn. 81), the number of union committee members laid off in the coat plant would be 9 out of 10. The tenth union committee member was also scheduled for layoff but for some unexplained reason Respondents changed their mind. See fn. 45 and I. R. p. 114 l. 23-25.

[84] On the basis of pure chance and eliminating all other factors, the possibility of selecting for layoff 9 out of 11 union committee members in a total layoff of 16 employees in a plant of 105, is comparable to a blindfolded person picking at least 9 black balls out of 16 picks from a bowl containing 11 black and 94 white balls. The mathematical possibility of such a selection, computed on the basis of the applicable formula, would be one chance out of 2,758,590. See *Uspensky, Introduction to Mathematical Probability*, (McGraw-Hill, 1937), chapter 1.

but also because Respondent's total pattern of conduct to resist and defeat the Union's organizational effort, herein persuades me that this was no happenstance. On the contrary, I am persuaded by the entire record, that the cut back in production was utilized by Respondents as a convenient device to carry out the threat of Morris Scharff to remove their payrolls of known union adherents.[85] I am further persuaded that the Respondents' application in the layoff of a different standard of comparison than that used in the selection of employees in the filling of vacancies, and the nonuniform application of the alleged standards for retention, were merely means utilized by Respondents to achieve a predetermined result, the discharge of the Union's proponents.

I therefore find and conclude that Respondents selected Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood for layoff because of their membership in the Union's volunteer organizing committee. By such conduct, Respondent discriminated in respect to the hire and tenure of employment of said employees, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act.

IV. The effect of the unfair labor practice upon commerce

The activities of the Respondents, set forth in Section III, above, occurring in connection with the operations of

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[85] As aforestated (I. R. p. 77, l. 2-11.) Supervisor Myrtle Ewing told her sister-in-law Violet Ewing that Morris Scharff said he would fire any operator, no matter how competent, if he found out she had joined the Union.

the Respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

In view of my finding that both Respondents constitute a single, integrated employer within the meaning of the Act, I shall recommend that both shall be jointly and severally responsible for remedying the unfair labor practices herein. Since I have found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents have discriminated and continue to discriminate against Lucille Yancey, Ruth Brooks, Lela Beaver, Evelyn Hudson[86] Bonnie Hamilton, Pauline McGee, Ida Harper and Frances Elizabeth Powell in respect to hire and tenure of employment, I will recommend that the Respondents be ordered to offer each of them immediate and full reinstatement to their former or substantially equivalent position without prejudice to their seniority and other rights and privileges, and

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[86]Evelyn Hudson was rehired by Walton on June 18, 1958, and assigned to the admittedly most difficult operation in the sleeve section, that of sleeve making. She was discharged again in August 1958, because of her inability to perform that operation. I therefore find and conclude that the rehiring of Hudson was not the equivalent of her reinstatement to her former or substantially equivalent position.

make each of them whole for any loss of earnings they have suffered because of the discrimination against them, by payment of a sum of money equal to the amount each of them normally would have earned as wages from the date of her discharge to the date of the offer of reinstatement, less her net earnings during said period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth*, 90 NLRB 289, 291-294. Having further found that Respondents have discriminated against Grace McCart, Nellie Wood, Pearl Coker, Violet Ewing and Nellie Hood[87] in respect to hire and tenure of employment, but that Respondents have since rehired these employees, I will recommend that the Respondents be ordered to make each of them whole for any loss of earnings suffered because of the discrimination against them, by payment of a sum of money equal to the amount each of them normally would have earned as wages from the date of her discharge to the date of each rehiring, less her net earnings during said period, with backpay computed on a quarterly basis in the manner set forth above. In the case of Nellie Hood, I shall further recommend that she also be made whole for the period of her second employment with Respondent Walton for the difference between what she received in compensation from said Respondent and what she would have received at her previous rate of $1.10 per hour. I will also recommend that the Respondents make available to the Board upon request, payroll and other records to facilitate the determination of the amounts due under this recommended remedy.

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[87]Nellie Hood was rehired on July 14, 1958, and was assigned to the same type of work she had previously performed, matching, carrying bundles and shanking buttons on the machine. However, upon her reemployment, she was given a cut in her hourly rate. Thereafter, she voluntarily quit her employment on October 3, 1958.

In view of the nature of the unfair labor practices committed, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall therefore recommend that the Respondents be ordered to cease and desist from in any manner infringing upon the rights guaranteed to its employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Respondents Walton Manufacturing Company and Loganville Pants Company constitute a single, integrated employer within the meaning of the Act.

2. Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By discriminating in respect to the hire and tenure of employment of Lucille Yancey, Grace McCart, Pearl Coker, Ruth Brooks, Lela Beaver, Nellie Wood, Violet Ewing, Evelyn Hudson, Bonnie Hamilton, Ida Harper, Pauline McGee, Frances Elizabeth Powell (nee Johnson) and Nellie Hood, thereby discouraging membership in Amalgamated Clothing Workers of America, AFL-CIO, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By the foregoing conduct and by interfering, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, the Respondents

have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. The General Counsel has not sustained the burden of proof of the allegations contained in paragraph 19 and 21 of the complaint.

6. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondents Walton Manufacturing Company and Loganville Pants Company, their officers, agents, successors, and assigns, shall jointly and severally:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of Amalgamated Clothing Workers of America, AFL-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any other term or condition of employment;

(b) Following or otherwise engaging in surveillance of union organizers; threatening employees with discharge, shutdown of the plant or with other economic sanctions to discourage union affiliation or adherence; coercively or otherwise unlawfully interrogating employees regard-

ing their union membership or activities; prohibiting employees from talking about the Union in the plant during nonworking hours; or in any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organization, to form or assist labor organizations, to join or assist Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer to Lucille Yancey, Ruth Brooks, Lela Beaver, Bonnie Hamilton, Pauline McGee, Frances Elizabeth Powell, Ida Harper and Evelyn Hudson immediate and full reinstatement to their former or to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of earnings she may have suffered as a result of the discrimination against her, as provided in the section of this report entitled "The Remedy";

(b) Make whole Nellie Wood, Violet Ewing, Grace McCart, Pearl Coker and Nellie Hood for their respective loss of earnings as a result of the discrimination against

them, as provided in the section of this report entitled "The Remedy";

(c) Preserve and make available to the Board or its agents, upon request for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right to reinstatement under the terms of this Recommended Order;

(d) Post at their plant or plants in Loganville, Georgia, copies of the notice attached hereto and marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Tenth Region shall, after being duly signed by Respondents, be posted immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Respondents shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material;

(e) Notify the aforesaid Regional Director in writing within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith.

I further recommend that unless Respondents shall within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Rela-

tions Board issue an order requiring the Respondents to take the aforesaid action.

Dated at Washington, D. C., this 15 day of May 1959.

(Signed) SAMUEL ROSS
Samuel Ross
Trial Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, by discharging, laying off, or refusing to reinstate any of our employees or in any other manner discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT PROHIBIT any of our employees from talking about unions on our property during nonworking hours.

WE WILL NOT threaten our employees with discharge, shutdown of the plant, or with any other economic sanction to discourage them from joining or assisting labor organizations or engaging in other concerted activities for mutual aid or protection.

WE WILL NOT follow or otherwise engage in surveillance of union organizers or agents.

WE WILL NOT coercively or unlawfully interrogate our employees regarding their union membership or activities.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to LUCILLE YANCEY, RUTH BROOKS, LELA BEAVER, BONNIE HAMILTON, PAULINE McGEE, IDA HARPER, FRAN-

CES ELIZABETH POWELL and EVELYN HUDSON, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL also make whole NELLIE WOOD, VIOLET EWING, GRACE McCART, PEARL COKER AND NELLIE HOOD for any loss of pay suffered by them as a result of the discrimination against them.

All our employees are free to become or remain or to refrain from becoming or remaining members of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

WALTON
MANUFACTURING
COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

LOGANVILLE
PANTS COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered or covered by any other material.

GENERAL COUNSEL'S EXCEPTIONS TO THE INTERMEDIATE REPORT

(Number and Title Omitted)

Counsel for General Counsel in these cases excepts to the Intermediate Report, issued on June 5, 1959 by Trial Examiner Samuel Ross, in the following particulars:[1]

1.

The failure "to consider or pass upon the additional incidents of interrogation allegedly engaged in by Morris Scharff and by Respondent's supervisors, Gerald Carter, Myrtle Ewing . . . and Edna Atha." (I.R. p. 75, lines 18-27)[2]

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[1]Counsel for General Counsel agrees with the general findings and recommendations of the Trial Examiner, but excepts to certain specific findings and to the Trial Examiner's failure to make certain findings.

[2]The Trial Examiner also included in the quoted language the name of Grace Higgins. However, no interrogation by Higgins was alleged in the complaint.

2.

The failure to find that interrogation of Violet Ewing by Forelady Myrtle Ewing as to whether she knew that Union organizers were around (I. R. p. 77, lines 2-9) violated Section 8 (a) (1) of the Act.

3.

The failure to find that Foreman Gerald Carter admittedly interrogated Nellie Hood on or about December 5, 1957, as to what Hood knew about the Union. (T. p. 523, line 19 to p. 524, line 9; p. 1096, lines 17-21.)

4.

The failure to find that the said interrogation of Nellie Hood by Foreman Gerald Carter, on or about December 5, 1957, as to what she knew about the Union (Exception 3, *supra*), violated Section 8 (a) (1) of the Act.

5.

The failure to find that on or about January 27, 1958, Foreman Gerald Carter admittedly accused Nellie Hood of having lied to him when, on or about December 5, 1957, he had interrogated her as to her knowledge of the Union. (T. p. 525, lines 3-12; p. 1097, lines 1-5.)

6.

The failure to find that the said accusation of lying, directed by Foreman Gerald Carter to Nellie Hood on or about

January 27, 1958 (Exception 5, *supra*), constituted interrogation of Hood.

7.

The failure to find that the said interrogation of Hood by Foreman Gerald Carter on or about January 27, 1958 (Exceptions 5 and 6, *supra*), violated Section 8 (a) (1) of the Act.

8.

The failure to find that Forelady Edna Atha admittedly interrogated employees, in latter November or early December, 1957, as to whether the Union people had been to see them. (T. p. 643, line 4 to p. 644, line 2; p. 555, lines 8-20; p. 1115, line 10 to p. 1116, line 2.)

9.

The failure to find that the said interrogations of employees by Forelady Edna Atha in latter November or early December, 1957 (Exception 8, *supra*), violated Section 8 (a) (1) of the Act.

10.

The failure to find that on or about January 10, 1958, Forelady Edna Atha admittedly interrogated Pauline Spradlin as to the subject of conversation between Spradlin and Nellie Wood. (T. p. 655, line 12 to p. 656, line 20; p. 1120, line 13 to p. 1121, line 3.)

11.

The failure to find that the said interrogation of Pauline Spradlin by Forelady Edna Atha as to the subject of conversation between Spradlin and Nellie Wood (Exception 10, *supra*) violated Section 8 (a) (1) of the Act.

12.

The failure to find that Lucille Yancey was an employee within the meaning of the Act at the time Morris Scharff told her that he was informed that she and her husband had been working with the Union organizers. (I.R. p. 84, lines 25-30; p. 97, lines 14-19.)

13.

The failure to find that Morris Scharff's statement to Lucille Yancey, that he was informed that she and her husband had been working with the Union organizers (I.R. p. 84, lines 25-30; p. 97, lines 14-19), constituted interrogation of Yancey as to union activity.

14.

The failure to find that the said interrogation of Yancey by Morris Scharff (Exception 13, *supra*) violated Section 8 (a) (1) of the Act.

15.

The failure to find that Morris Scharff's interrogation of Lucille Yancey as to where her husband worked and if he was an officer of a union (I.R. p. 84, lines 30-31; p. 85, line 1; p. 97, lines 14-18) violated Section 8 (a) (1) of the Act.

16.

The failure to find that Morris Scharff's promise to Lucille Yancey that if the Union did not get in he would reinstate her (I.R. p. 85, lines 3-10; p. 97, lines 14-20), violated Section 8 (a) (1) of the Act.

17.

The finding and conclusion that General Counsel did not sustain the burden of proof of the allegation of paragraph 19 of the complaint with respect to conditioning employment opportunities upon whether or not the Union became the representative of Respondent's employees. (I.R. p. 81, lines 19-23; p. 158, lines 4-6.)

18.

The recommendation that paragraph 19 of the complaint be dismissed. (I.R. 158, lines 4-6.)

19.

The finding that Morris Scharff's statement to Nellie Wood, "Let's wait and see what the Union does", when

Wood asked about a job for her stepdaughter, Gibson (I.R. p. 80, lines 28-30; p. 81, lines 1-7), was ambiguous and capable of many interpretations.[3]

20.

The implied finding that the said statement of Morris Scharff to Nellie Wood (Exception 19, *supra*) contained no discriminatory import unless it could be interpreted as necessarily implying that a job would be given to Gibson if the Union did not become the representative of Respondent's employees. (I.R. p. 81, lines 17-23.)

21.

The failure to find that the said statement of Morris Scharff to Nellie Wood (Exception 19, *supra*) violated Section 8 (a) (1) of the Act.

22.

The failure to find that Morris Scharff's statement to Lela Beaver, that if the Union came in he would go out the back door (I.R. p. 117, lines 16-21), constituted a threat of economic reprisal.

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[3]Through typographical error, the Intermediate Report says that paragraph 19 of the complaint alleged that Respondent conditioned employment opportunities for "respective" employees . . . , rather than for "prospective" employees.

23.

The failure to find that Lela Beaver was an employee within the meaning of the Act when Morris Scharff told her that if the Union came in he would go out the back door (I.R. p. 117, lines 16-21), and when he interrogated her as to how she got mixed up with the Union. (I.R. p. 117, lines 19-21.)

24.

The failure to find that Morris Scharff's said statement to Lela Beaver (Exception 22, *supra*) violated Section 8 (a) (1) of the Act.

25.

The failure to find that the interrogation of Lela Beaver by Morris Scharff, as to how she ever got mixed up with the Union (I.R. p. 117, lines 19-21), violated Section 8 (a) (1) of the Act.

26.

The failure to find that Morris Scharff's interrogation of the employees named in the Union's letter of January 18, 1958[4] (I.R. p. 113, lines 13-28; p. 114, lines 1-7), violated Section 8 (a) (1) of the Act.

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[4]Hereinafter called simply the Union's letter.

27.

The failure to find that Morris Scharff's interrogation of Nellie Wood as to whether she knew that her name was in the Union's letter (I.R. p. 121, lines 7-12) violated Section 8 (a) (1) of the Act.

28.

The failure to find that Morris Scharff's interrogation of Nellie Wood as to whether she wanted her name to remain on the Union's letter (I.R. p. 121, lines 11-13) violated Section 8 (a) (1) of the Act.

29.

The failure to find that Morris Scharff's asking Nellie Wood if she knew the consequences of leaving her name on the Union's letter (I.R. p. 121, lines 12-14) was a threat of economic reprisal.

30.

The failure to find that the said threat of economic reprisal (Exception 29, *supra*) violated Section 8 (a) (1) of the Act.

31.

The failure to find that Morris Scharff's interrogation of Evelyn Hudson with respect to her name being in the Union's letter (I.R. p. 126, lines 15-19) violated Section 8 (a) (1) of the Act.

32.

The failure to find that Morris Scharff's question to Evelyn Hudson, "Do you realize, Evelyn, that this could work a hardship on you?" (I.R. p. 126, lines 19-21) constituted a threat of economic reprisal.

33.

The failure to find that the said threat of economic reprisal (Exception 32, *supra*) violated Section 8 (a) (1) of the Act.

34.

The failure to find that Morris Scharff's interrogation of Evelyn Hduson as to whether she wanted to leave her name on the Union's letter (I.R. p. 126, lines 22-23) violated Section 8 (a) (1) of the Act.

35.

The failure to find that Morris Scharff's interrogation of Violet Ewing regarding her authorization of the use of her name in the Union's letter (I.R. p. 128, lines 26-30) violated Section 8 (a) (1) of the Act.

36.

The failure to find that Morris Scharff's interrogation of Violet Ewing as to whether she "still wanted to go along with [the Union]" (I.R. p. 128, lines 30-32) violated Section 8 (a) (1) of the Act.

37.

The failure to find that Morris Scharff's interrogation of Frances Elizabeth Powell (nee' Johnson) with respect to the presence of her name in the Union's letter (I.R. p. 133, line 30; p. 134, lines 1-4) violated Section 8 (a) (1) of the Act.

38.

The failure to find that Morris Scharff's statement to Frances Elizabeth Powell (nee' Johnson), "Well, if that's the way you want it" in conjunction with his interrogation of her with respect to the Union's letter (I.R. p. 133, line 30; p. 134, lines 1-7) constituted a threat of economic reprisal.

39.

The failure to find that Morris Scharff's said threat of economic reprisal to Frances Elizabeth Powell (nee' Johnson) (Exception 38, *supra*) violated Section 8 (a) (1) of the Act.

40.

The failure to find that Morris Scharff's interrogation of Ida Harper about the use of her name in the Union's letter (I.R. p. 138, lines 10-14) violated Section 8 (a) (1) of the Act.

41.

The failure to find that Morris Scharff's interrogation of Ida Harper as to whether she wanted her name to remain on the Union's letter (I.R. p. 138, lines 11-17) violated Section 8 (a) (1) of the Act.

42.

The failure to find that Morris Scharff's statement to Ida Harper, after interrogating her about the Union's letter (Exceptions 40 and 41, *supra*), constituted a threat of economic reprisal.

43.

The failure to find that the said threat of economic reprisal by Morris Scharff to Ida Harper (Exception 42, *supra*) violated Section 8 (a) (1) of the Act.

44.

The failure to find that Morris Scharff's interrogation of Pauline McGee as to whether she had authorized the use of her name in the Union's letter (I.R. p. 144, lines 14-18) violated Section 8 (a) (1) of the Act.

45.

The failure to find that Morris Scharff's question to Pauline McGee, "Do you know what that means?" (I.R. p. 144, lines 14-20) constituted a threat of economic reprisal.

46.

The failure to find that the said threat of economic reprisal by Morris Scharff to Pauline McGee (Exception 45, *supra*) violated Section 8 (a) (1) of the Act.

47.

The failure to find that Morris Scharff interrogated Jeanette Beaver with respect to the Union's letter. (I.R. p. 114, lines 3-17.)

48.

The failure to find that the said interrogation of Jeanette Beaver by Morris Scharff (Exception 47, *supra*) violated Section 8 (a) (1) of the Act.

49.

The finding and the Conclusion of Law that General Counsel failed to sustain the burden of proof of the allegation of paragraph 21 of the complaint with respect to Respondent having induced and assisted employees to withdraw from the Union. (I.R. p. 82, lines 32-33; p. 83, lines 1-3; p. 158, lines 4-6.)

50.

The implied finding that the posting of Respondent's Exhibit 3 and General Counsel's Exhibit 9 and the address of the Union constituted the only evidence in support of the

allegation that Respondent induced and aided employees to withdraw from the Union. (I.R. p. 83, lines 1-6.)

51.

The finding that the record contained no evidence that agents of the Respondent assisted or suggested withdrawal from the Union. (I.R. p. 83, lines 6-10.)

52.

The recommendation to dismiss paragraph 21 of the complaint. (I.R. p. 83, lines 11-12.)

53.

The failure to find that Respondent induced and encouraged its employees to withdraw from and renounce the Union, and that it assisted them to so do.

54.

The failure to find that Respondent's inducement and encouragement of its employees to withdraw from and renounce the Union, and its assistance to them to do so (Exception 53, *supra*) violated Section 8 (a) (1) of the Act.

Signed at Atlanta, Georgia, this 18th day of June, 1959.

(Signed) A. C. JOY
A. C. Joy
Counsel for General Counsel

CERTIFICATE OF SERVICE

It is hereby certified that copies of the attached General Counsel's Exceptions to the Intermediate Report have on this day been duly served upon the following parties, by prepaid United States Certified Mail, at the addresses indicated:

Walton Manufacturing Company
Loganville, Georgia

Loganville Pants Company
Loganville, Georgia

(With copy by regular mail to:

Mr. Robert T. Thompson
615 Rhodes Haverty Building
Atlanta 3, Georgia)

Amalgamated Clothing Workers of America, AFL-CIO
15 Union Square
New York 3, N. Y.

(With copy by regular mail to

Mr. Jacob Sheinkman
c/o Amalgamated Clothing Workers
15 Union Square
New York 3, N. Y.).

(Signed) A. C. JOY
A. C. Joy
528 Peachtree-Seventh Building
Atlanta 23, Georgia

Dated at Atlanta, Georgia,
June 18, 1959.

CORRECTION TO GENERAL COUNSEL'S EXCEPTIONS TO INTERMEDIATE REPORT

(Number and Title Omitted)

The Exceptions to the Intermediate Report heretofore filed by General Counsel, mailed on June 18, 1959, are hereby corrected by adding the following inadvertently omitted paragraphs:

55.

The failure to find that Morris Scharff's interrogation of Bonnie Hamilton with respect to her name being in the Union's letter (I.R. p. 130, lines 18-25) violated Section 8 (a) (1) of the Act.

56.

The failure to find that Morris Scharff's interrogation of Nellie Hood with respect to her name being in the Union's

letter (I.R. p. 149 lines 27-33; p. 150, lines 1-2) violated Section 8 (a) (1) of the Act.

Dated at Atlanta, Georgia, this 22nd day of June, 1959.

(Signed) A. C. JOY
A. C. Joy
Counsel for General Counsel
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

CERTIFICATE OF SERVICE

It is hereby certified that copies of the attached Correction to General Counsel's Exceptions to the Intermediate Report have this day been duly served upon the following parties, by prepaid United States Certified Mail, at the addresses indicated:

Walton Manufacturing Company
Loganville, Georgia

Loganville Pants Company
Loganville, Georgia

(With copy by regular mail to:

Mr. Robert T. Thompson
615 Rhodes-Haverty Building
Atlanta 3, Georgia)

Amalgamated Clothing Workers of America, AFL-CIO
15 Union Square
New York 3, N. Y.

(With copy by regular mail to:

Mr. Jacob Sheinkman
c/o Amalgamated Clothing Workers
15 Union Square
New York 3, N. Y.)

(Signed) A. C. JOY
A. C. Joy
Counsel for General Counsel
National Labor Relations Board

Dated at Atlanta, Georgia,
June 22, 1959.

EXCEPTIONS TO THE INTERMEDIATE REPORT AND RECOMMENDED ORDER OF THE TRIAL EXAMINER, ON BEHALF OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, THE CHARGING PARTY HEREIN

(Number and Title Omitted)

The following exceptions are hereby filed on behalf of the Amalgamated Clothing Workers of America (hereinafter referred to as the "Union") to the Intermediate Report and Recommended Order of the Trial Examiner in the above entitled matter dated May 15, 1959.

1. The Union excepts to so much of the Intermediate Report that accepts as substantially accurate the typed reproductions of the speeches made by Morris Scharff, which speeches were allegedly recorded on a dictaphone machine at the time they were made. (I.R. p. 70, lines 7-16)

2. The Union excepts to the refusal of the Trial Examiner in his Intermediate Report to credit General Counsel's witnesses' recollection and interpretation of the actual speeches given by Morris Scharff. (I.R. p. 69, lines 19-24; p. 70, lines 1-7)

3. The Union excepts to so much of the Intermediate Report that finds the speeches of Morris Scharff to

be protected free speech within the meaning of Section 8 (c) of the Act, except for the following:

> ". . . remember. I have no association with this Company, officially. I hope to have in the near future, but if you want a Union Shop, you are going to have it without me, because I have had my stomach full of Unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it." (I.R. p. 71, lines 14-20)

(I.R. p. 69, lines 19-24; p. 70, lines 1-23; p. 71, lines 1-26)

4. The Union excepts to so much of the Intermediate Report as does not consider the additional incidents of interrogation engaged in by Morris Scharff and by Respondents' supervisors, Gerald Carter, Myrtle Ewing, Grace Higgins and Edna Atha. (I.R. p. 75, lines 18-27)

5. The Union excepts to so much of the Intermediate Report and Recommended Order that refuses to find that the Respondent induced and assisted its employees to withdraw from the Union as set forth in Paragraph 21 of the Complaint. (I.R. p. 80, lines 28-30; p. 81, lines 1-33; p. 82, lines 1-33; p. 83, lines 1-10)

Signed at New York, New York, this 26th day of June, 1959.

(Signed) JACOB SHEINKMAN
JACOB SHEINKMAN
Attorney for the Amalgamated
Clothing Workers of America
15 Union Square
New York 3, N. Y.

CERTIFICATE OF SERVICE

It is hereby certified that copies of the attached Amalgamated Clothing Workers of America's Exceptions to the Intermediate Report have this 26th day of June 1959 been duly served upon the following parties, by prepaid United States Certified Mail, at the addresses indicated:

A. C. Joy
Counsel for General Counsel
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

Mr. Robert T. Thompson
615 Rhodes-Haverty Building
Atlanta 3, Georgia

(With copy by regular mail to:

Walton Manufacturing Company
Loganville, Georgia

Loganville Pants Company
Loganville, Georgia)

(Signed) JACOB SHEINKMAN
Jacob Sheinkman
Attorney for the Amalgamated
Clothing Workers of America
15 Union Square
New York 3, N. Y.

Dated at New York, N. Y.
June 26, 1959.

RESPONDENTS' EXCEPTIONS TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

(Number and Title Omitted)

Come now the Respondents, WALTON MANUFACTURING COMPANY and LOGANVILLE PANTS COMPANY, Respondents in the above-styled case and file these their Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner as follows:

1.

Each and every finding of the interrelation between the operations of Respondents Walton and Loganville except as was expressly stipulated to by the parties.

2.

Each and every finding of the agency status of Morris Scharff with respect to Respondents except as was expressly stipulated to by the parties.

3.

The finding that,

> "Respondents promptly took measures to defeat the Union's organizational efforts. In the last week of November 1957, Respondents sent a letter to all their employees which set forth the benefits of employment with Respondents, announced new benefits, paid vacations and holidays, and stated that Respondents were also considering a pension plan for their employees (G. C. Exh. 7). The letter concluded with the statement, "no employee has to pay dues or initiation fees to any outside union — [or] outsiders for the privilege of working here." " (I.R. p. 65, l. 12-21.)

4.

The finding that,

> "was followed by Walton employee J. B. Stephens, driving in a 1957 green Plymouth car owned by Morris Scharff." (I.R. - p. 66, l. 6-8)

5.

The finding that,

> "that when she came out and proceeded to a second employee's home, she was followed by the same Plymouth car, about three car lengths behind her. When Broom arrived at the second employee's home, the Plymouth car also stopped a short distance from the employee's home." (IR — p. 66, l. 13-18)

6.

The finding that,

> "they again observed Stephens, parked and alone in the green Plymouth, watching them. That afternoon, Mrs. Broom's car was again followed by Stephens in the green Plymouth to her first call at an employee's home, but when she stopped, the Plymouth car continued on." (IR — p. 66, l. 33 and p. 67, l. 1-5)

7.

The finding that,

> "Stephens was not called by Respondents to testify regarding his reasons for following Mrs. Broom's car, and no explanation for his failure to testify was offered." (IR — p. 67, l. 22-25)

8.

The finding and conclusion that,

> "I am convinced that, notwithstanding the lack of direct evidence that Stephens was following Organizer Broom's car pursuant to Respondents' instructions, the circumstantial evidence warrants the conclusion that he did so on Respondents' behest, and I so find. I base this finding and conclusion on the following circumstances: (1) Stephens' day long use of Morris Scharff's car to follow Organizer Broom; (2) Stephens' report to Morris Scharff at the plant at midday (after his morning surveillance of Organizer Broom) that the organizers were at Breeze Inn; (3) Morris Scharff's visit to the restaurant accompanied by Stephens, allegedly to see the organizers; (4) Morris Scharff's evident interest in the license numbers of all the organizers' cars, shown by his notation of their license numbers and by the fact that the organizers' cars were pointed out to Scharff by Stephens; (5) Stephens' continued observation of the organizers at the restaurant and his following Organizer Broom in Morris Scharff's car directly after Scharff's visit to the restaurant; (6) Respondents' failure to call Stephens to testify and the absence of any explanation therefor; (7) the lack of any rational reason why Stephens, a janitor, would be so interested personally in the activities of the union organizers that he would spend practically an entire day in following one of them and in observ-

ing them; and (8) the admitted hostility of Respondents and Morris Scharff to the Union's organizational efforts." (IR - p. 67, l. 27-33 and p. 68, l. 1-19)

9.

The finding and conclusion that,

"I therefore find and conclude that by the aforedescribed conduct Respondents engaged in surveillance of the activities of the union organizers, and thereby interfered with, restrained and coerced their employees in the exercise of their rights to engage in concerted activity, in violation of Section 8 (a) (1) of the Act." (IR — p. 68, l. 19-23 and p. 69, l. 1-2)

10.

The finding that,

"I do not credit Scharff's inadequate explanations for Stephens' use of his car throughout the day, for his visit to Breeze Inn and for noting the license numbers of the organizers' cars, and I do not credit his denial that he authorized Stephens to follow the organizers." (IR — p. 68, l. 26-30)

11.

The finding that,

> "the fact that no employees were at the Breeze Inn to observe Scharff take down the license numbers of the organizers' cars and none observed the following of Broom's car by Stephens, is immaterial and does not detract from the violation." (IR — p. 69, l. 30-34)

12.

The finding that,

> "Morris Scharff made an antiunion speech to all of Walton's employees." (IR -- p. 69, l. 9-10)

13.

The finding that,

> "where Morris repeated the antiunion speech in the presence of his brother Arthur, Loganville Pants' treasurer, and Mr. Hughley, the plant superintendent." (IR — p. 69, l. 12-15)

14.

The finding that,

> "One week later, on December 10, 1957, Morris Scharff made a second antiunion speech on com-

pany time to the employees at the Walton plant, and later that same day, made a similar speech to the Loganville Pants employees." (IR - p. 69, l. 15-18)

15.

The finding that,

"The speech then continued with a harangue against the Union, including an appeal to sectional prejudice based on the northern origin of the Union and an appeal to class prejudice based on the "millions of dollars" accumulated by the Union through dues, initiation fees and assessments which "comes out of the pockets of the worker who is trying to put bread and milk on the table." " (IR — p. 71, l. 5-11)

16.

The finding that,

"That is not to say that I regard Morris Scharff as a truthful witness," (IR — p. 70, l. 35-36)

17.

The finding that,

"This statement is, of course, completely inconsistent with Morris Scharff's previously stated lack

of official connection with Walton. Indeed, the speech is replete with references showing Morris' supervision of the plant and the knowledge thereof by Respondents' employees; e. g., the reference to the request made to Morris by employees for permission to wear slacks, shorts or low cut dresses during the summer; his illustration that if the employees' and his positions were reversed and the employees were "my foreman and my boss"; and his control of the terms of repayment of loans made by Respondents to employees." (I.R. — p. 71, l. 28-37)

18.

The finding and conclusion that,

"that statement conveyed a threat to the economic security of Respondents' employees if the Union became their representative." (IR — p. 72, l. 4-6)

19.

The finding that,

"I base this conclusion on the fact that the threat not to associate" (IR — p. 72, l. 6-7)

20.

The finding that,

"Respondents' employees could, as many of them

apparently did, reasonably interpret that statement as the equivalent of a threat to shut down the plant rather than deal with the Union." (IR — p. 72, l. 14-17)

21.

The finding that,

"but merely that he (Morris Scharff) would no longer be associated with the business if the Union came in. The statement, coming as it did from Respondents' principal operating official, constituted a threat to the economic security of Respondents' employees and violated Section 8 (a) (1) of the Act." (IR — p. 72, l. 24-29 and p. 73, l. 1)

22.

The ruling that,

"I do not credit Morris' explanations for his interrogation of Grace McCart." (IR — p. 74, l. 9-10)

23.

The ruling that,

"the admitted inquiry tends to confirm McCart's belief that her discharge was motivated by her attendance at the union meeting. Moreover, on the entire record, I do not regard Morris Scharff as a truthful or reliable witness." (IR — p. 74, l. 13-17)

24.

The finding that,

> "By stating that he knew who had attended the meeting, Scharff gave Grace McCart the impression that Respondents had engaged in surveillance of the meeting." (IR — p. 75, l. 1-3)

25.

The finding that,

> "In the context of Respondents' admitted hostility to the Union and Morris Scharff's antiunion speeches, by Scharff's interrogation of Grace McCart regarding her attendance at the union meeting and the identity of the employee who had solicited her attendance and of others who attended, Respondents engaged in restraint and coercion of employees in the exercise of their rights under the Act." (IR — p. 75, l. 9-15)

26.

The finding that,

> "My lack of regard for the veracity of Morris Scharff as a witness is based on, *inter alia*: (1) his testimony that on the date of the discharge of Pearl Coker (January 15, 1958), he did not know whether or not she belonged to the Union, when in fact, only the day before he had interrogated Grace Mc-

Cart regarding Coker's attendance at the January 9 meeting, and in connection therewith, admitted it was common knowledge that Coker was 1 of 3 employees who were "heavily pro-union"; (2) his implausible testimony regarding the use of his car for surveillance of union organizers and for taking down the license numbers of their cars; (3) his testimony, which I do not credit, that he had no official connection with Respondents until June 1957, when in fact he moved to Atlanta from New York in April 1957; (4) his speech to employees that he had no official connection with Respondents whereas the record shows that he was their principal operating official; (5) his implausible testimony that operators who never worked on high speed sewing machines are more easily trained than persons who have operated such machines; and (6) his testimony, which I cannot believe, that Respondents' employees asked him after his antiunion speech whether he was for or against the Union." (IR — p. 74, l. 20-40)

27.

The finding that,

"In view of my finding that by the aforementioned interrogation and statements of Morris Scharff, Respondents engaged in unfair labor practices in violation of Section 8 (a) (1) of the Act." (IR — p. 75, l. 18-21)

28.

The finding that,

> "the additional incidents of interrogation allegedly engaged in by Morris Scharff and by Respondents' Supervisors Gerald Carter, Myrtle Ewing, Grace Higgins and Edna Atha" (IR — p. 75, l. 22-25)

29.

The finding that,

> "that they [the Scharffs] would close their plant down before they would work union labor." (IR — p. 76, l. 8-10)

30.

The ruling that,

> "Since I do not regard Grace Higgins as a credible witness and the threat to close down the plant rather than work with union labor is consistent with the implications of Morris Scharff's speech in which he threatened that he would not associate with Respondents if th Union came in, I credit the testimony of Pearl Coker that Higgins made the statement attributed to her by Coker." (IR — p. 76, l. 13-19)

31.

The finding that,

> "if you don't want to dig your own grave, you had better shut up talking about the Union." (IR — p. 77, l. 1-2)

32.

The finding that,

> "Morris [Scharff] said he didn't care how good an operator a girl was, or who she was, that he would fire her if he found out she had joined the Union." (IR — p. 77, l. 9-11)

33.

The ruling that,

> "I resolve these conflicts in the testimony against Respondents because: (1) I credit the testimony of employee McGee and Violet Ewing; (2) the statements attributed to Supervisor Ewing are consistent with Respondents' antiunion attitude and as hereinafter found, with the subsequent discharge of employees because of their union adherence; and (3) I do not regard Supervisor Myrtle Ewing as a credible witness." (IR — p. 77, l. 26-31 and p. 78, l. 1-2)

34.

The finding that,

> "that Higgins' testimony is untrustworthy upon the entire record, including: (1) her demeanor as a witness; (2) her testimony that she heard Morris Scharff make a speech in the plant and yet did not know that Morris Scharff was against the Union; (3) her incredible testimony that the speech was primarily "not about the union"; (4) her testimony, that she never discussed the Union with her supervisors, which was contradicted by the testimony of both Superintendent Prosterman and Morris Scharff, whom I credit in this respect; and (5) her testimony that she was out sick when Francis Elizabeth Johnson was laid off, but was present when Evelyn Hudson was laid off, both layoffs having occurred on the same day and time." (IR — p. 76, l. 26-37)

35.

The finding and conclusion that,

> "I find and conclude that by the above statements made by Supervisors Grace Higgins and Myrtle Ewing to the employees Pearl Coker, Pauline McGee and Violet Ewing, Respondent Walton engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act." (IR — p. 78, l. 4-8)

36.

The conclusion that,

> "I base my conclusion on the unreliability of the testimony of Supervisor Myrtle Ewing on various considerations, including, but not limited to: (1) the improbability of her telling Pauline McGee that she was digging her own grave and uncooperative merely because on this one occasion, Pauline McGee was not at her machine to resume work when the bell rang, although admittedly she was enroute to her machine; (2) the implausibility of Supervisor Ewing's testimony, which in fact was contradicted by both Superintendent Prosterman and Morris Scharff, that she had never received instructions not to discuss the Union with employees; (3) her likewise implausible testimony that she neither received instructions from nor consulted with Morris Scharff, whom I have already found to be the principal official of Respondents in respect to production (Myrtle Ewing's testimony was given before Respondents conceded Morris Scharff's agency and before he testified that he supervised Walton); and (4) her testimony that she began preparing for the layoff in December, when according to Superintendent Prosterman and Morris Scharff, they did not notify the supervisors about the layoff until the middle of January." (IR — p. 78, l. 22-41)

37.

The finding that,

> "The uncontradicted evidence discloses that the prohibition of union talk in the plant was not limited to working time". (IR — p. 80, l. 7-9)

38.

The finding that,

> "I find that by the announcement of such prohibition by Superintendent Hughley, Respondent Loganville Pants interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby violated Section 8 (a) (1) of the Act." (IR — p. 80, l. 10-14)

39.

The finding that,

> "the argument in the plant described above did not warrant Hughley's threat to cease trying to get work o contracts for the plant, and that threat clearly restrained and coerced and interfered with the employees' rights to engage in concerted activities. *B & Z Hosiery Products Co.*, 85 NLRB 633, 634. Accordingly, I find that by such threat, Respondent Loganville Pants engaged in unfair

labor practices within the meaning of Section 8 (a) (1) of the Act." (IR — p. 80, l. 16-23)

40.

The finding that,

"According to her uncontradicted testimony, Mrs. Yancey was told by her supervisor, Grace Higgins, that her work had improved, that the Company was pressing for more production, but that "they [the Company] won't have to worry about you." " (IR — p. 83, l. 25-29)

41.

The finding that,

"that he could not put her back to work, but if the Union did not get in, he would reinstate her." (IR — p. 85, l. 8-10)

42.

The ruling that,

"I infer that Lucille Yancey worked on at least 200 to 250 garments, which meant that Yancey's defects, according to this witness' testimony, would be 1 or 2 a day out of at least 200 to 250. Accordingly, I do not credit Mrs. Meeks' testi-

mony either in respect to the alleged arguments between Supervisor Higgins and Mrs. Yancey, or in respect to arguments between the latter and Odelle Barnes and Mrs. Meeks." (IR — p. 89, l. 34-37 and p. 90, l. 32-35)

43.

The finding that,

"My analysis of the reasons assigned by Respondents for her discharge do not persuade me of their validity." (IR — p. 92, l. 8-10)

44.

The finding that,

"The alleged failure of Lucille Yancey to make production is belied by her payroll record (G. C. Exh. 29) which showed her makeup pay was not a regular occurrence, contrary to Prosterman's testimony that she "never" made production." (IR — p. 92, l. 12-15)

45.

The finding that,

"I am persuaded that to the extent she had makeup pay, it was attributable to insufficient work to keep her occupied full time. Accordingly, I do not

believe Respondents' assertion that failure to make production was one of the reasons she was discharged." (IR - p. 92, l. 21-25)

46.

The finding that,

"I do not place any credence in Respondents' testimony regarding Lucille Yancey's alleged uncooperative and unruly behavior." (IR — p. 92, l. 27-29.)

47.

The finding that,

"I cannot perceive how the request therefor demonstrated either lack of cooperation or unruliness." (IR — p. 93, l. 5-7)

48.

The finding that,

"As to the machine, the complaints, if made were apparently well founded." (IR — p. 93, l. 9-11)

49.

The finding that,

"As to the "fussing" at other girls, Mrs. Higgins'

testimony was not corroborated by any of the employee witnesses called by Respondents and I do not credit Mrs. Higgins in this respect." (IR — p. 93, l. 13-16)

50.

The finding that,

"I also do not credit Higgins' testimony that she instructed Yancey on how to do her work properly and that Yancey resented and refused to take such instructions. Since I do not believe Respondents' testimony that Lucille Yancey was "uncooperative" or "unruly," I also do not believe that that was one of the reasons for her discharge." (IR — p. 93, l. 18-23)

51.

The finding that,

"There was nothing either in the testimony of Mrs. Yancey or in her demeanor while testifying which causes me to believe that she was other than a credible witness and I credit her testimony in this regard. Conversely, I disbelieve the testimony of Supervisor Higgins and Morris Scharff that Mrs. Yancey was frequently, if not daily, reprimanded about her work." (IR — p. 94, l. 8-14)

52.

The finding that,

> "As to the witness, Plant Superintendent Prosterman, I likewise do not credit his testimony that he reprimanded Mrs. Yancey for bad work, nor his uncorroborated testimony that she grumbled and complained constantly to fellow employees." (IR — p. 94, l. 17-21)

53.

The finding that,

> "once or twice a day out of approximately 250 garments, she mismatched the proper facing and lining and sewed the darts on the wrong side of the lining." (IR — p. 95, l. 1-4)

54.

The finding that,

> "I am not persuaded that Yancey's errors of this type were more than those of other employees who have performed this operation." (IR — p. 95, l. 5-7)

55.

The finding that,

> "The only testimony regarding Yancey's alleged failure to distribute fullness properly was that of Prosterman and Higgins[31] whom I generally discredit" (IR — p. 95, l. 12-14)

56.

The finding that,

> "I am not persuaded that it was due to any lack of ability on the part of Mrs. Yancey but rather to the skimpy cut of the lining which she admittedly and frequently called to the attention of her supervisor." (IR — p. 95, l. 15-19)

57.

The finding that,

> "I found Prosterman's testimony with respect to Morris Scharff's alleged lack of official connection with the Company to be wholly untrustworthy." (IR — p. 94, l. 27-29)

58.

The finding that,

> "as aforestated Prosterman's testimony that Mrs. Yancey never made production was shown to be false by her payroll record." (IR — p. 94, l. 37-39)

59.

The finding that,

> "I do not believe Respondents' testimony that Mrs. Yancey was discharged because of her incompetency." (IR — p. 95, l. 24-25)

60.

The finding that,

> "this alleged reason for her termination is likewise without substance." (IR — p. 96, l. 7-8)

61.

The finding that,

> "I discredit and reject the reasons asserted by Respondents for her discharge on December 4, 1957." (IR — p. 96, l. 13-15)

62.

The finding that,

"I have discredited the reasons asserted by Respondents for Mrs. Yancey's discharge," (IR - p. 96, l. 17-18)

63.

The finding that,

"Respondents in an effort to counteract the Union's organizing efforts, engaged in acts of interference, restraint and coercion of employees in violation of Section 8 (a) (1) of the Act." (IR - p. 96, l. 25-28)

64.

The finding that,

"just 4 days before the discharge of Mrs. Yancey, agents of Respondent, including Morris Scharff and J. B. Stevens had engaged in surveillance of the union organizers." (IR — p. 96, l. 29-32)

65.

The finding that,

"on the day before Mrs. Yancey's discharge, Morris Scharff had made an antiunion speech in the plant,

including therein a statement which I have found to be the equivalent of a threat to close the plant if the Union came in, or at least a threat to the economic security of Respondents' employees." (IR - p. 96, l. 32-33 and p. 97, l. 1-4)

66.

The finding that,

"on the basis of Respondents' surveillance of the activities of the union organizers on November 30, 1957, there is sufficient evidence for me to infer that Mrs. Yancey was known or believed by Respondent Walton to be an active union adherent." (IR — p. 97, l. 9-13)

67.

The finding that,

"I credit Mrs. Yancey's testimony that in her conversation with Morris, the latter questioned her regarding her husband's status as a paid official of the Railway Clerks' Union and told Yancey that he had been informed that she and her husband were assisting the union organizers and that she would be rehired if the Union did not get in." (IR — p. 97, l. 14-20)

68.

The finding that,

> "Yancey's discharge for her union adherence is consistent with the threat repeated by Supervisor Ewing to employee Myrtle Ewing, that regardless of competence, Morris Scharff would fire any employee if he found out she joined the Union. Accordingly, on the record before me, I am satisfied that Mrs. Yancey was discharged on December 4, 1957, because of her activity on behalf of the Union. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Lucille Yancey thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act." (IR — p. 97, l. 20 and p. 98, l. 1-10)

69.

The finding that,

> "it is beyond my comprehension that if, as testified by Morris Scharff, Supervisor Grace Higgins had threatened to quit and was "crying" because of her inability to get along with Mrs. Yancey, he would not have done so forthwith instead of 10 days thereafter, especially since Yancey was allegedly, such a poor employee." (IR — p. 95, l. 30-35)

70.

The finding that,

"Morris Scharff's version of these conversations is not credited by me." (IR — p. 97, l. 22-23)

71.

The finding that,

"Aside from my general disbelief in his veracity" (IR — p. 97, l. 23-24)

72.

The finding that,

"I have the following reasons for not crediting Morris Scharff's version of these conversations." (IR — p. 97, l. 25-27)

73.

The finding that,

"Mrs. McCart credibly testified that before that day, neither Myrtle Ewing, Prosterman nor any other supervisor, had told her that her work was bad." (IR — p. 99, l. 13-16)

74.

The finding that,

> "I credit Grace McCart's and Rose Tribele's testimony that it was Prosterman who did so. There would be no reason for Mrs. McCart or for the witness, Rose Tribele to testify that Mrs. McCart had been discharged by Prosterman rather than Supervisor Ewing since, if the discharge was illegal, Walton would be equally responsible regardless of which of them did so." (IR — p. 99, l. 27-33)

75.

The finding that,

> "On the other hand, I have already, in connection with other aspects of this case had reason to disbelieve testimony given by both Prosterman and Supervisor Ewing." (IR — p. 99, l. 36-39)

76.

The finding that,

> "Interrogation of Employees by Morris Scharff." (IR - p. 99, l. 21 and p. 100, l. 1)

77.

The finding that,

> "and Scharff, in reply, inquired, whether she had attended the union meeting on January 9, asked who was at the meeting, who had accompanied McCart to the meeting, and whether Ruth Brooks, Pearl Coker and Jeanette Beaver had attended. When McCart refused to divulge the names, Morris Scharff said that he knew everyone who attended the union meeting, anyway, and that Brooks, Coker and Beaver "were heavily prounion and active in the organization attempt." " (IR - p. 100, l. 3-11)

78.

The finding that,

> "I do not believe the testimony of Prosterman, Ewing or Scharff, regarding their reasons for McCart's discharge for the following reasons:" (IR — p. 100, l. 21-23)

79.

The finding that,

> "Prosterman's attempted explanation for this, that her machine was a difficult one to operate and he had no replacement for her, is likewise not believable." (IR — p. 101, l. 7-9)

80.

The finding that,

"Thus, a replacement for McCart was available, contrary to Prosterman's testimony." (IR — p. 101, l. 15-16)

81.

The finding that,

"that "declining" quality is inconsistent with Prosterman's testimony regarding McCart's "continuous" history of poor quality," (IR — p. 101, l. 26-28)

82.

The finding that,

"Scharff substantially admitted this interrogation of Grace McCart and I have not credited his explanation that he was attempting to reassure McCart that her union membership and attendance at a union meeting were not the reasons for her discharge." (IR - p. 100, l. 31-35)

83.

The finding that,

"the testimony regarding McCart's continuous poor work cannot be accepted by me." (IR — p. 102, l. 1-2)

84.

The finding that,

> "including Respondents' admitted hostility to the Union, Morris Scharff's professed knowledge of all who attended the union meeting of January 9, 1958, his interrogation of McCart regarding her attendance and the attendance of others at that meeting, McCart's discharge on the day following the meeting, and my disbelief of the reasons assigned by Respondent Walton for her discharge, and its consistency with the threat repeated by Supervisor Ewing that Morris Scharff would fire any employee who joined the Union, I find and conclude that Respondent Walton had knowledge of McCart's attendance at the union meeting at the time of her discharge and discharged her because of that fact. By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Grace McCart, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act." (IR — p. 102, l. 10-26)

85.

The finding that,

> "According to Coker's credited testimony, she was never told prior to her discharge that she was not doing enough work." (IR — p. 103, l. 17-19)

86.

The finding that,

> "Their testimony regarding the quantity of such defective work was extremely vague" (IR — p. 102, l. 30-31)

87.

The finding that,

> "the discovery of such defects is consistent with the uncontradicted testimony of Grace McCart regarding the malfunctioning of her machine and thus, does not establish alleged poor quality." (IR — p. 102, l. 33-36)

88.

The finding that,

> "Supervisor Higgins' testimony in respect to the unsatisfactory quality of Pearl Coker's work was contradicted by both Plant Superintendent Prosterman and Morris Scharff, both of whom testified on the subject of Pearl Coker's discharge." (IR - p. 104, l. 22-26)

89.

The finding that,

> "I do not credit the testimony of Grace Higgins in respect to the alleged poor quality of Pearl Coker's work." (IR — p. 105, l. 1-3)

90.

The finding that,

> "I likewise do not credit Respondents' testimony that Pearl Coker was discharged because she did not produce a sufficient quantity of work." (IR - p. 105, l. 5-7)

91.

The finding that,

> "According to the credited testimony of Hester Lou McCart" (IR — p. 105, l. 7-8)

92.

The finding that,

> "I am not persuaded that Pearl Coker's lack of productive capacity was the real reason for the sudden decision to discharge her in the middle of a workweek." (IR — p. 105, l. 25-28)

93.

The finding that,

"Nor am I persuaded of the veracity of Respondents' explanation for their decision to discharge Pearl Coker on January 15 rather than on January 31, when other employees were terminated because of the cutback in production." (IR — p. 106, l. 1-5)

94.

The finding that,

"The attempted explanation is, in my opinion, no explanation for Coker's precipitous discharge in the middle of a workweek, 2½ weeks before her replacement was actually available" (IR — p. 106, l. 13-16)

95.

The finding that,

"Alleged threats by Supervisors Grace Higgins and Myrtle Ewing," I have set forth additional reasons for doubting her Higgins' veracity." (IR — p. 105, l. 32-34)

96.

The conclusion that,

> "the real reason for Coker's sudden discharge obviously lies elsewhere." (IR — p. 106, l. 18-19)

97.

The finding that,

> "According to her credited testimony" (IR — p. 106, l. 21)

98.

The finding that,

> "that she did not know who in the plant would want a union and further stated that at their supervisory meeting, the Scharffs had said that they would close their doors down before they would work with union labor. Morris Scharff, who was admittedly opposed to the Union, had on December 3, 1957, told Respondents' employees in a speech, that if they wanted a union, they could have it without him. Scharff testified that at the time of Coker's discharge, he did not know that Pearl Coker was a member of the union. This testimony directly contradicted that given by him in connection with the discharge of Grace McCart,

in which he admitted that on January 14, 1958, the day before Coker's discharge, he had asked Grace McCart whether Pearl Coker had attended the union meeting of January 9 and testified that his reason for doing so was that it was common knowledge that Pearl Coker was one of the employees who were heavily prounion and active in the Union's organizational attempt. In view of this apparent Freudian slip, I am unable to credit Morris Scharff's denial of knowledge of Coker's union adherence and activity nor do I believe his assertions of the reasons for Pearl Coker's discharge." (IR — p. 106, l. 26-33 and p. 107, l. 1-16)

99.

The finding that,

"I am convinced and find [illegible] the reasons asserted for Pearl Coker's discnarge on January 15, 1958, were a pretext and that the real reason therefor was her union adherence and support. Accordingly, I find and conclude that the discharge of Pearl Coker on January 15, 1958, was motivated by Respondent's antiunion animus in an effort to thwart the Union's organizing efforts in the plant with knowledge of the fact that she was "heavily prounion and active in the organization attempt." By such conduct, Respondent Walton discriminated in respect to hire and tenure of employment of Pearl Coker thereby discouraging membership in

the Union in violation of Section 8 (a) (1) and (1) of the Act." (IR — p. 107, l. 18-30)

100.

The finding that,

" " Morris [Scharff] made me do it." " (IR — p. 109 l. 24)

101.

The finding that,

"Well you girls are paying too much attention to this guy that came down from the North giving you the piece rates on your job and we cannot afford to pay those rates that they pay us there." (IR — p. 109, l. 26-30)

102.

The finding that,

"He made me do it." (IR — p. 110, 1. 23)

103.

The finding that,

" "this guy that came down from the North" was apparently a reference to either Union Organizer

Milton Eiger who is from New York City or to the New York City address of the Union's International headquarters." (IR - p. 109, l. 32-34)

104.

The finding that,

"I do not credit Morris Scharff's testimony that the decision to discharge Mrs. Brooks was made by Hughley because: (1) contrary it is to Scharff's testimony that he, not Hughley, made the decisions for the pants plant; (2) I do not regard Scharff as a reliable witness; and (3) Hughley was not called to deny Brooks' testimony that Hughley discharged her because "Morris made me do it." (IR — p. 110, l. 30-33 & p. 111, l. 1-3)

105.

The finding and conclusion that,

"I therefore do not believe that Ruth Brooks was discharged in connection with a reduction in force by Respondent Loganville Pants." (IR — p. 111, l. 14-16)

106.

The finding that,

> "Furthermore, the discharge of Ruth Brooks for "insufficient quantity of work produced,"[42] is inconsistent with Ruth Brooks' undenied and credited testimony that Hughley regarded her as a satisfactory employee, notwithstanding her make-up pay." (IR — p. 111, l. 20-24)

107.

The finding that,

> "I do not credit any of the reasons assigned by Respondent Loganville Pants for Brooks' discharge." (IR — p. 112, l. 1-3)

108.

The ruling that,

> "The true motivation for Ruth Brooks' discharge must, therefore, be sought elsewhere." (IR — p. 112, l. 5-6)

109.

The finding that,

> "interrogated McCart regarding her attendance at the union meeting on January 9," (IR — p. 112, l. 14-15)

110.

The finding and Conclusion that,

> "I find that all three of these firings were part of a pattern of antiunion conduct on the part of Respondents to resist and defeat the union organizational efforts by eliminating from their payroll their prounion employees. By such conduct Respondents discriminated in respect to hire and tenure of employment of Ruth Brooks, thereby discouraging membership in the Union, in violation of Section 8 (a) (3) and (1) of the Act." (IR — p. 112, l. 24-31)

111.

The finding that,

> "and apparently in an effort to discourage further discrimination against its adherents." (IR — p. 113, l. 13-14)

112.

The finding that,

> "Morris Scharff interrogated each of the employees in the coat plant named therein." (IR — p. 114, l. 5-6)

113.

The finding that,

> "I do not credit this explanation since the record does not establish that any of the others had either seen or signed the letter." (IR — p. 114, l. 17-19)

114.

The finding that,

> "I do not credit this explanation for the retention of Alice Lowe rather than Lela Beaver, since Beaver regularly performed two operations, setting flies and turning corners, and also performed other operations when she was ahead on her production." (IR — p. 117, l. 33 & p. 118, l. 1-4)

115.

The finding that,

> "there was no reason for selecting Beaver rather than Lowe for layoff on the basis of quantity of production." (IR — p. 118, l. 20-22)

116.

The finding that,

> "I find Scharff's testimony unworthy of belief for a number of reasons. In the first place, as aforestated, Beaver regularly performed two operations, setting flies and turning corners, and when caught up with her work, which was frequently, she was put on other operations. Secondly, Morris Scharff's alleged knowledge of Lela Beaver's work and his opinion regarding her lack of capability to perform two operations, must have been acquired, if at all, long after Lela Beaver's termination by Respondents" (IR — p. 119, l. 5-13)

117.

The finding that,

> "I do not believe that Scharff had any personal knowledge of Lela Beaver's work either at the time of her discharge or when he testified at the hearing." (IR — p. 119, l. 26-28)

118.

The finding that,

> "that the reasons assigned by Scharff for the non-retention of Lela Beaver were advanced to conceal the true reason therefor.[51] My conclusion in this respect is also based on the fact, that on the record herein, Lela Beaver was at least equal to Alice Lowe in quality, production and versatility, and, therefore, on Respondents' own alleged standards for selection, Lela Beaver would have been retained on the basis of her greater seniority." (IR — p. 119, l. 33 & p. 120, l. 1-8)

119.

The finding that,

> "Wood was clearly a more versatile operator than both Starrett and Bowen." (IR — p. 122, l. 2-4)

120.

The finding that,

> "Wood was also superior to Starrett in productive capacity." (IR — p. 122, l. 9)

121.

The finding that,

> "Wood should have been retained over both Bowen and Starrett." (IR — p. 122, l. 14-15)

122.

The finding that,

> "I do not credit Prosterman's testimony regarding the reason for Wood's selection for termination." (IR — p. 122, l. 20-22)

123.

The finding that,

> "Thus in respect to the quality of Wood's work, Ewing's testimony contradicts Prosterman. I do not credit her testimony in this respect." (IR — p. 122, l. 29-31)

124.

The finding that,

> "Scharff's letter bases Wood's layoff on lack of quality and thereby contradicts his testimony that her work was not so bad as to require her layoff for that reason." (IR — p. 123, l. 13-16)

125.

The finding that,

> "Scharff's testimony contradicts Prosterman's testimony regarding the satisfactory quality of Wood's work." (IR — p. 123, l. 16-18)

126.

The finding that,

> "Scharff's testimony is inconsistent with the raise which he admittedly gave Wood. Accordingly, I do not credit Scharff's testimony regarding his reasons for the selection of Nellie Wood for termination." (IR — p. 123, l. 21-24)

127.

The finding that,

> "In view of the shifting and contradictory reasons asserted by Respondent Walton for Wood's termination, further consideration of the record is required to ascertain the real motivation therefor." (IR — p. 123, l. 26-29)

128.

The finding that,

> "Ewing falsely promised[54] to speak to Morris Scharff" (IR — p. 124, l. 2-3)

129.

The finding that,

> "Ewing admitted she had no intention of requesting Wood's reinstatement for reasons which I do not credit." (IR — p. 124, l. 29-30)

130.

The finding that,

> "I do not credit the shifting and contradictory reasons asserted by Respondent Walton for Mrs. Wood's selection for termination on January 31, 1958, and I find and conclude, notwithstanding Respondent Walton's denial, that Wood was rehired on June 21, 1958, because she renounced the Union and requested the withdrawal of "her charge" against Walton." (IR — p. 125, l. 10-16)

131.

The conclusion that,

> "It was quite evident to me that Mrs. Wood believed that she could not remain an employee of Walton and a Union supporter at the same time and that she was most reluctant to testify against Respondents. The tears that flowed from her eyes as she testified, in my opinion, were induced by fear that Respondents would again regard her as pro-union and take reprisal against her for testifying. Since she was one of the most active of the Union's workers, I do not credit her testimony quoted above, that she was sorry from the start that she joined the Union, because it was obviously inspired by fear of reprisal." (IR — p. 125, l. 27-32)

132.

The finding that,

> "The implication of this testimony, that it would be necessary to train Evelyn Hudson in the operations performed by Grace Barnes and Bonnie Thompson, overlooks the fact that Hudson had and could perform the operations of both. Accordingly, I do not credit it." (IR — p. 127, l. 13-17)

133.

The finding that,

> "since Grace Barnes and Bonnie Thompson performed only one operation each, the decision to retain them rather than Hudson, notwithstanding the latter's greater versatility, is contrary to the standards allegedly applied by Respondent Walton in selecting employees for retention.[59] In view of the foregoing, I do not cr it the reasons assigned by Respondent Walton for Hudson's selection for layoff." (IR — p. 127, l. 18-24)

134.

The finding that,

> "I do not credit Higgins' testimony which implies that Evelyn Hudson was laid off because of insufficient production." (IR — p. 127, l. 26-27)

135.

The finding and conclusion that,

> "In view of Respondent Walton's failure to explain why it did not consider and compare Ewing fc. retention with Madeline, Prosterman's reason for retaining Britt, an employee with lesser seniority than Ewing, does not persuade me that that was the reason for Ewing's selection for layoff." (IR — p. 129, l. 16-21)

136.

The finding and conclusion that,

> "Because of the foregoing and my general lack of faith in the credibility of Prosterman to which I have heretofore adverted, I do not credit Respondent Walton's reasons for selecting Ewing, an experienced, senior and competent operator, for layoff." (IR — p. 129, l. 28-32)

137.

The finding that,

> "Since there is no question about Respondent Walton's knowledge of the union activities of the employees involved in the layoff who are alleged as discriminatees herein." (IR — p. 130, l. 30-31)

138.

The finding that,

> "The implication of this credited testimony is that Hamilton's work was better in quality than Yancey's and that the latter was not as cooperative as Hamilton in the matter of doing repair work." (IR-p. 131, l. 15-19)

139.

The finding that,

> "I do not credit Respondent's wholly subjective testimony regarding the reasons for selecting Bonnie Hamilton for layoff. The testimony regarding the degree in which Yancey's work was allegedly better was inconsistent, varying from Prosterman's "greater potential" and Carter's "a little better" to the statement in Scharff's letter, "much better." (IR — p. 132, l. 12-18)

140.

The finding that,

> "This lack of consistency and shifting of reasons for Hamilton's layoff merely confirms my general disbelief in the credibility of Respondent's witnesses. The uncontradicted and credited testimony of Floorworker Nellie Hood persuades me that Yancey's work was not better than Hamilton's." (IR — p. 132, l. 21-26)

141.

The finding and conclusion that,

> "I am impelled to the conclusion to disbelieve the reason asserted by Respondent for Hamilton's selection for layoff, because of the failure of Respond-

ent to compare Hamilton with other employees in the plant whose operations she occasionally performed since Respondent admittedly considered all employees in the plant in the filling of vacancies.[62] And finally, I am led to this conclusion by Respondent's failure to consider Hamilton's greater seniority." (IR - p. 133, l. 2-10)

142.

The finding that,

"His testimony in respect to the number of employees in the lining section was subsequently contradicted both by his own later testimony and by his layoff report" (IR - p. 134, l. 17-20)

143.

The finding that,

"Prosterman further testified that Johnson had makeup pay, which I likewise do not credit" (IR- p. 134, l. 22-23)

144.

The finding that,

"I do not credit Prosterman's testimony regarding the quality of Johnson's work." (IR - p. 135, l. 16-18)

145.

The finding that,

> "I do not credit Higgins regarding the poor quality or quantity of Johnson's work.[63]" (IR - p. 135, l. 29-30)

146.

The finding that,

> "I have, in prior sections of this report, indicated my lack of faith in the reliability of Higgins' testimony." (IR - p. 135, l. 32-33)

147.

The finding that,

> "Scharff's testimony contradicts both Prosterman and Higgins regarding the quality of Johnson's work. But even Scharff's testimony regarding the reason of Johnson's selection for layoff is unreliable and I do not credit it." (IR - p. 136, l. 7-11)

148.

The finding that,

> "This directly contradicts his testimony that Johnson was coming along fairly well with her training." (IR - p. 136, l. 14-15)

149.

The finding that,

> "An additional reason exists for my disbelief of the reasons assigned by Respondent Walton for Johnson's selection for layoff." (IR - p. 136, l. 17-19)

150.

The finding that,

> "I do not believe Respondent Walton's reason for Johnson's selection for layoff." (IR - p. 137, l. 4-5)

151.

The finding that,

> "to which I credit Harper's uncontradicted testimony." (IR - p. 139, l. 13-14)

152.

The finding that,

> "This, of course, corroborates Harper's testimony regarding lack of sufficient work to keep her occupied full time and explains her makeup pay." (IR - p. 139, l. 20-22)

153.

The finding that,

"I do not believe Prosterman's testimony that inability to produce sufficiently or makeup pay was a reason for Harper's selection for termination." (IR - p. 139, l. 25-28)

154.

The finding that,

"I do not credit Prosterman's testimony that absenteeism was a reason for Harper's selection for termination." (IR - p. 140, l. 8-10)

155.

The finding that,

"I do not believe either that Harper was requested to increase her production on Prosterman's vague testimony regarding her "poor general attitude." (IR - p. 140, l. 20-22)

156.

The finding that,

"Since none of the other reasons (that she played around, spent a lot of time in the washroom and

talked excessively) were alluded to in Prosterman's report to Scharff in preparation for the layoff, I do not believe that these were the reasons for her layoff and I do not credit them." (IR - p. 140, l. 24-26 and p. 141, l. 1-2)

157.

The finding that,

"I do not credit Myrtle Ewing's testimony in any respect in which it conflicts with that of Ida Harper. (IR - p. 141, l. 12-13)

158.

The finding that,

"I do not credit Ewing's testimony that Harper's alleged "bad work" was a reason for Harper's selection for layoff." (IR - p. 141, l. 21-23)

159.

The finding that,

"I do not credit Ewing's testimony that she spoke to Harper daily about her bad work or lack of work.[88] Accordingly, I do not credit Ewing's testimony regarding the records for Harper's termination." (IR-p. 142, l. 4-7)

160.

The finding that,

> "His explanation, that production was needed from Harper's section and that her machine was difficult to learn, I find implausible," (IR - p. 141, l. 28-29)

161.

The finding that,

> 'I do not credif Scharff's testimony that either poor work quality or bad conduct was a reason for Harper's selection for layoff." (IR - p. 142, l. 25-27)

162.

The finding that,

> "The record discloses an additional ground for disbelieving the reasons asserted by Respondent Walton for Harper's selection for layoff." (IR - p. 143, l. 1-3)

163.

The finding that,

> "The failure to compare Finley with Harper is especially significant" (IR - p. 143, l. 11-12)

164.

The finding that,

> "I therefore regard Respondent's failure to compare Harper with Finley, and the discredited and inconsistent reasons asserted for Harper's selection for termination, to be indicative of a determination to dispense with her services for a reason or reasons other than those asserted by Respondent Walton." (IR - p. 143, l. 20-25)

165.

The finding that,

> "I also do not believe that her makeup pay was a reason for Harper's termination." (IR - p. 142, l. 32-33)

166.

The finding that,

> "I place no credence in the reasons asserted by Prosterman for McGee's selection for layoff. His subjective testimony that Finley "had shown greater progress" and "greater potential" is unsupported by any credible specific testimony." (IR - p. 145, l. 25-28)

167.

The finding that,

> "Prosterman's testimony that Finley "earned more money on the job" than McGee, is refuted by a comparison of Respondent Walton's payroll records for these employees." (IR - p. 146, l. 4-6)

168.

The finding that,

> "Prosterman's testimony that Finley earned more money than McGee is without foundation and I do not credit it." (IR - p. 146, l. 16-18)

169.

The finding that,

> "I do not credit Prosterman's subjective testimony that Finley showed "greater potential" and "progress" than McGee, nor that Finley earned more money than McGee, and I do not believe that these were the reasons for McGee's selection for layoff." (IR - p. 147, l. 7-11)

170.

The finding that,

> "I also do not believe that Finley's greater seniority was the real reason McGee was selected for layoff." (IR - p. 147, l. 13-14)

171.

The finding that,

> "I do not believe that seniority was the true reason for McGee's selection for termination." (IR - p. 148, l. 7-8)

172.

The finding and conclusion that,

> "My refusal to credit the reasons assigned by Prosterman for McGee's selection for termination is further based on the fact that although McGee was admittedly a satisfactory employee, she was never rehired although she applied to Respondent for work, and yet new employees with no prior experience were hired by Walton after the layoff." (IR - p. 148, l. 10-15)

173.

The finding that,

> "Nevertheless, Prosterman maintained that the new employees' skills could be better applied than Pauline McGee's. I find this testimony incredible and I refuse to believe it." (IR - p. 148, l. 19-22)

174.

The finding that,

> "My reasons for disbelieving that seniority was the reason for McGee's termination." (IR - p. 148, l. 26-27)

175.

The finding that,

> "For that reason and because I do not regard Scharff as a credible witness generally, I do not believe that Finley's alleged better quality was the reason for McGee's selection for layoff." (IR - p. 148, l. 33 & p. 149, l. 1-3)

176.

The finding that,

> "my general lack of faith in the credibility of Prosterman, Myrtle Ewing and Morris Scharff, I cannot

and do not credit the reasons assigned by Respondent Walton for McGee's selection for layoff." (IR-p. 149, l. 8-11)

177.

The finding that,

"In view of the complete absence of any testimony explaining the method or means by which Hood, rather than one of the other unskilled employees, was selected by Respondent for layoff, and the fact that Hood, an admittedly satisfactory employee had seniority over Francis Green who took over part of Hood's work, and on the entire record herein, I do not believe Respondent's asserted reason for Hood's selection for layoff." (IR - p. 151, l. 1-8)

178.

The finding that,

"My conclusions herein before set forth, that the reasons asserted by Respondents for the selection for layoff of Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood, are unworthy of belief and discredited, are not, of course, the equivalent of a finding that said employees were so selected by reason of their union adherence and/or activity. However, the record herein provides ample support for the latter

conclusion. As I have already found, the Respondents were admittedly hostile to the Union's organizational efforts and upon its inception, took active steps to prevent its success. These steps included: (1) a letter to their employees outlining new benefits, paid vacations and holidays which employees could enjoy without paying "dues or initiation fees to any outside union"; (2) following a union organizer while she was engaged in soliciting membership in the Union; (3) taking down the license numbers of the organizers' cars; (4) anti-union speeches to Respondents' employees in which Morris Scharff, Respondents' principal operating official, threatened to terminate his association with Respondents if the Union became the employees' representative; (5) interrogation of employees regarding attendance at union meetings and the creation of the impression that Respondents had engaged in surveillance of union meetings by stating that Respondents knew everybody who attended; (6) the threat, conveyed by a supervisor to an employee, that Respondents would close down the plant rather than work with union labor; (7) the threat by a supervisor to an employee to "shut up talking about the Union" "if you don't want to dig your own grave"; (8) the threat conveyed by a supervisor to an employee that Respondents would discharge an employee, no matter how competent, if she joined the Union; (9) the promulgation of a rule at the pants plant against talking about the Union, not limited to working hours; (10) the threat by the pants plant superintendent that he would cease attempting to

get work for the employees, if they persisted in talking about the Union; and (11) the discharge of Lucille Yancey, Grace McCart, Pearl Coker and Ruth Brooks, because of activity in support of the Union.[80] Having thus disposed of the threat posed by the employees whom Respondents regarded as the Union ringleaders, the Respondents were then faced with a new threat, the Union's letter naming a dozen members of the Union's volunteer organizing committee. Thereupon, Respondents ascertained by interrogation that at least all but one of the employees named in the letter were steadfast in their union adherence, and seized upon the opportunity presented by the contemplated layoff to get rid of the members of the Union committee." (IR - p. 151, l. 14-33 & p. 152, l. 1-34 & p. 153, l. 1)

179.

The finding that,

"The disparate number of union committee members laid off in the coat plant in relation to the total number laid off in that plant and the total employment therein, is in itself, although not conclusive, persuasive evidence of discrimination." (IR - p. 153, l. 5-7)

180.

The finding that,

> "I am asked to believe that this almost complete elimination from employment of the members of the union's committee is pure coincidence. I find it incredible, not only because of its mathematical improbability,[84] but also because Respondent's total pattern of conduct to resist and defeat the Union's organizational effort, herein persuades me that this was no happenstance. On the contrary, I am persuaded by the entire record, that the cut back in production was utilized by Respondents as a convenient device to carry out the threat of Morris Scharff to remove from their payrolls of known union adherents.[85] I am further persuaded that the Respondents' application in the layoff of a different standard of comparison than that used in the selection of employees in the filling of vacancies, and the nonuniform application of the alleged standards for retention, were merely means utilized by Respondents to achieve a predetermined result, the discharge of the Union's proponents." (IR - p. 153, l. 17-28 & p. 154, l. 1-14)

181.

The finding and conclusion that,

> "On the basis of pure chance and eliminating all other factors, the possibility of selecting for layoff

9 out of 11 union committee members in a total layoff of 16 employees in a plant of 105, is comparable to a blindfolded person picking at least 9 black balls out of 16 picks from a bowl containing 11 black and 94 white balls. The mathematical possibility of such a selection, computed on the basis of the applicable formula, would be one chance out of 2,758,590. See *Uspensky, Introduction*" (IR - p. 153, l. 29-33)

182.

The finding and conclusion that,

"I therefore find and conclude that Respondents selected Lela Beaver, Nellie Wood, Evelyn Hudson, Violet Ewing, Bonnie Hamilton, Frances Elizabeth Johnson, Ida Harper, Pauline McGee and Nellie Hood for layoff because of their membership in the Union's volunteer organizing committee. By such conduct Respondents discriminated in respect to the hire and tenure of employment of said employees, thereby discouraging membership in the Union in violation of Section 8 (a) (3) and (1) of the Act." (IR - p. 154, l. 16-24)

183.

The finding that,

"The activities of the Respondents, set forth in Section III, above, occurring in connection with the

operations of the Respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof." (IR - p. 154, l. 29-30 & p. 155, l. 1-5)

184.

The finding that,

"that both Respondents constitute a single, integrated employer within the meaning of the Act, I shall recommend that both shall be jointly and severally responsible for remedying the unfair labor practices herein. Since I have found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act." (IR - p. 150, l. 9-17)

185.

Exception is taken to the receipt of the affidavits of General Counsel's witnesses into the rejected exhibit file, and the subsequent reading thereof by the Trial Examiner.

186.

The recommendations, and each and every one thereof, and more particularly recommendation 1 (a) and (b); 2

(a), (b), (c), (d) and (e) and the further recommendation that Respondents be required, within 20 days from the date of the receipt of the Intermediate Report to notify the Regional Director that it will comply with said recommendations; and the recommendation that the "National Labor Relations Board issue an order requesting the Respondents to take the aforesaid action." (IR - p. 158, l. 13-33; p. 159, l. 1-32; p. 160, l. 1-32 & p. 161, l. 1-2)

187.

Each and every ruling of the Trial Examiner which was adverse to the Respondents during the course of the trial.

188.

Each, every and all of the findings, conclusions and recommendations which are adverse to the Respondents, to which specific exceptions may or may not have been made hereinabove.

WILSON, BRANCH AND BARWICK

(Signed) By ROBERT T. THOMPSON

(Signed) By J. FRANK OGLETON, JR.

615 Rhodes-Haverty Bldg.
Atlanta 3, Georgia
JAckson 4-3611

CERTIFICATE OF SERVICE

I, ROBERT T. THOMPSON, of counsel for the Respondent in the within and foregoing matter, do hereby certify that I have this day served a copy of the foregoing document upon the following by depositing same in the United States mail, properly addressed, postage prepaid:

Amalgamated Clothing Workers of America, AFL-CIO
14 Union Square
New York 3, New York

Jacob Sheinkman, General Counsel
Amalgamated Clothing Workers of America, AFL-CIO
15 Union Square
New York 3, New York

Arthur C. Joy, Attorney
National Labor Relations Board
Peachtree-Seventh Building
50 Seventh Street, N. E.
Atlanta 23, Georgia.

J. R. Goldthwaite, Jr.
Attorney
Candler Building
Atlanta 3, Georgia

This the 26th day of June, 1959.

(Signed) ROBERT T. THOMPSON
Robert T. Thompson

124 NLRB No. 181

D-998
Monroe, Ga.

DECISION AND ORDER

(Number and Title Omitted)

On May 15, 1959, Trial Examiner Samuel Ross issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of such allegations. Thereafter, the Respondents, the General Counsel, and the Union filed exceptions to the Intermediate Report, and supporting briefs.

The Board[1] has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. With respect to Morris Scharff's anti-union speeches to the employees, we, like the Trial Examiner, are satisfied,

[1] Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

from a comparison of the transcriptions of the speeches with the testimony of the witnesses as to the speeches, that the transcriptions are substantially accurate reproductions of what was said, notwithstanding the absence of the dictaphone tapes initially made of such speeches and the mechanical possibility that portions of what was said might have been omitted from the tapes and/or the transcriptions of the tapes. Thus, as found by the Trial Examiner, the only portion of the transcriptions' version of the speeches which may be viewed as violative of Section 8 (a) (1) was Scharff's threat not to associate with the Respondents if the Union came in. Similarly, while some of the General Counsel's witnesses testified that Scharff expressly said that the plant would close down if the Union came in, most of these witnesses testified that he expressly said only that he would leave if the Union came in, and only one witness testified without any corroboration that Scharff said that if the employees wanted to forget that they had signed for the Union he was willing to forget it too. We also note that Scharff similarly admitted in his testimony concerning his speeches that "I did say that if the union were to come in and organize the plant, that I personally would not be there." Thus, the transcription's version of Scharff's speeches is corroborated by the testimony of most of the General Counsel's witnesses on the subject, and by Scharff's own consistent testimony on the subject which constituted in effect an admission against interest. Moreover, as found by the Trial Examiner, in the context in which it was made, the Respondents' employees could, as many of them apparently did, reasonably interpret Morris Scharff's threat, not to associate with Respondents if the Union came in, as the equivalent of a threat to shut down the plant rather than deal with the Union, and in any event as a threat to

their economic security which was violative of Section 8 (a) (1).[2] In view of these circumstances, we accept the transcriptions of the speeches here as being substantially accurate reproductions of what was said, although we would ordinarily be reluctant to accept dictaphone tapes and/or transcriptions thereof as being accurate because of the mechanical possibility that they might be "altered." Accordingly, we, like the Trial Examiner, accept the transcriptions insofar as the recollection of some of the General Counsel's witnesses differs from the transcriptions, viz., that instead of making an express statement that the plant would be closed if the Union came in, Morris Scharff expressly stated only that he would leave if the Union came in, which statement these General Counsel witnesses reasonably *interpreted* as a threat to close the plant if the Union came in.[3]

2. The Trial Examiner found, and we agree, that in the context in which it occurred, Morris Scharff's interrogation of Grace McCart regarding her attendance at a union meeting and the identity of the employee who had solicited her

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[2] See *Audobon Cabinet Company, Inc.*, 117 NLRB 861, 863, 864, and cases cited. The Trial Examiner found that Morris Scharff similarly stated to employee Lela Beaver shortly after her discriminatory layoff that "if the Union came in, he would go out the back door", but neglected to find that this threat was likewise a violation of Section 8 (a) (1). We so find.

[3] As further stated by the Trial Examiner, this is not to say that Morris Scharff, who is discredited in all other respects, is to be regarded as a truthful witness. It is to say only that, in the circumstances, we regard the *transcriptions* of his speeches, as *corroborated* by most of the General Counsel's witnesses, as being substantially accurate.

As only 1 witness out of 8 testified without corroboration that Morris Scharff also said that if the employees wanted to forget the Union he would too, we do not consider this as sufficient evidence in the circumstances to even be considered as representing a conflict with the transcriptions.

attendance and of others who attended, constituted unlawful interrogation in violation of Section 8 (a) (1). We do not agree, however, with his further finding that, in view of this incident of unlawful interrogation found, it is unnecessary to pass upon the additional incidents of interrogation alleged in the complaint, because no different order would result therefrom. Because of the many other incidents of unlawful interrogation which the record shows were engaged in not only by Morris Scharff but also by Supervisors Gerald Carter, Myrtle Ewing, and Edna Atha, all of which had a substantially further coercive effect on the Respondents' employees, we deem it necessary to make the following additional findings of unlawful interrogation engaged in by the Respondents in violation of Section 8 (a) (1):[4]

(a) Following the discriminatory discharges of employees Lucille Yancey, Grace McCart, Pearl Coker, and Ruth Brooks, and apparently in an effort to discourage further discrimination against its adherents which however was unsuccessful, the Union on January 18, 1958, sent a letter to Respondents advising them that 12 named employees were members of the Union and serving on the "volunteer organizing committee" for the shop, and that these employees "have been fully advised of their rights under the National Labor Relations Act." Upon receipt of this letter, Morris Scharff separately interrogated each of 10 employees named therein as to whether they had authorized the use of their

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[4]In the context of Respondents' admitted hostility to the Union, and all of the other unfair labor practices engaged in by Respondents to thwart by unlawful means their employees' right to self-organization, these other acts of interrogation were clearly unlawful. See *Blue Flash Express, Inc.*, 109 NLRB 591.

names,[5] further interrogated some as to whether they wanted to allow their names to remain in the letter,[6] also in substance threatened some with discharge therefor,[7] and thereafter discriminatorily laid off 9 of the 12 employees named in the letter because of their membership in the "volunteer organizing committee," as ascertained by such interrogation.[8] In these circumstances, it is clear, and we find, that Morris Scharff's individual interrogation of 10 employees[9] as to whether they were members of the Union and of the Union's "volunteer organizing committee," and his further individual interrogation of 4 of these employees as to whether they wanted to remain such, constituted unlawful interrogation in violation of Section 8 (a) (1).

(b) We find that Supervisor Gerald Carter's interrogation of employee Nellie Hood, about the time of Morris Scharff's first anti-union speech to the employees, as to what Hood "knew about the Union", constituted unlawful interrogation.[10]

(c) We find that Supervisor Myrtle Ewing's interrogation of employee Violet Ewing, about 2 weeks after the

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[5]All employees named in the letter were thus interrogated, except Lucy Brooks who was absent, and Lela Beaver who worked in the geographically removed pants plant.

[6]Nellie Wood, Evelyn Hudson, Violet Ewing, and Ida Harper.

[7]Nellie Wood, Evelyn Hudson, Frances Powell, and Ida Harper.

[8]The only employees named in the letter who were not discriminatorily laid off were Jeanette Beaver who did not fully affirm her adherence to the letter, Lucy Brooks who was not interrogated about the letter because she was absent, and Mary Lou Partain who was scheduled for layoff but with respect to whom Respondents changed their minds for some unexplained reason.

[9]Nellie Wood, Evelyn Hudson, Violet Ewing, Frances Elizabeth Powell, Ida Harper, Pauline McGee, Bonnie Hamilton, Nellie Hood, Jeanette Beaver, and Mary Lou Partain.

[10]The Trial Examiner made no finding that this interrogation occurred. We base our finding of fact on Hood's testimony, and Carter's subsequent admission that he so interrogated Hood.

Union organizational campaign began, as to whether the latter knew that there were Union organizers around, constituted unlawful interrogation.

(b) We find that Supervisor Gerald Carter's interrogation of employee Ruth Brooks, employee Nancy Williams, and "two or three" other employees, all within a week of about December 1, 1957, as to whether the Union people had been to see them, constituted unlawful interrogation."

3. We disagree with the Trial Examiner's findings that Superintendent Hughley's promulgation of a rule prohibiting Loganville Pants employees from talking about the Union in the plant, and his accompanying statement that he would cease trying to get work or contracts for the plant, constituted violations of Section 8 (a) (1) of the Act.

As set forth by the Trial Examiner, the evidence on these alleged violations was as follows: Loganville Pants employee Ruth Brooks testified that following a lunch hour argument among the employees in the plant about the Union, Superintendent Hughley cut off the power to the machines and told all the employees: "I am sick and tired about hearing this talk about the Union. I am working trying to get contracts so that you girls can have work, and if this is the way you are going to do, I am through with it." Employee Lela Beaver testified that on this occasion, Hughley said that he had heard enough about the Union and did not want to hear any more about it, that he was tired

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"The Trial Examiner made no findings that these interrogations occurred. We base our findings on the testimony of Brooks and Williams, and Atha's admission that she engaged in these interrogations.

of it, that he did not need the Union to tell him what to do and push him around, and that if the employees had anything to say about the Union, to say it at home or outside the plant, not in the plant. Referring to new contracts, employee Beaver testified that Hughley said he would get them if the Union would leave him alone. According to employee Nancy Williams, Superintendent Hughley said on this occasion, that he would not have any union talk in the shop, that he was trying to get more contracts, but if the employees were not interested, he would not try. According to employee Williams, Hughley's remarks were prompted by the fact that the argument about the Union had continued after the bell to resume work had rung, and some of the girls were not at their machines.

On the basis of the long-established rule that an employer has a right to prevent interference with production by prohibiting union discussion during working hours but no right to prohibit such discussion during non-working time,[12] and on the basis of a finding that the uncontradicted evidence discloses that Hughley's prohibition of union talk in the plant was not limited to working time, the Trial Examiner found that Hughley's announcement of such prohibition was a violation of Section 8 (a) (1). He found further that the argument about the Union which preceded the announcement of the prohibition did not warrant Hughley's threat to cease trying to get work or contracts for the plant, and that such threat interfered with, restrained, and coerced the employees in their right to engage in concerted activities, in violation of Section 8 (a) (1).

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[12] *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U. S. 793; *Peyton Packing Company, Inc.*, 49 NLRB 828, 843, enfd. 142 F. 2d 1009 (C. A. 5); cert. denied 323 U. S. 730.

It is true that Hughley did not specifically limit his prohibition of union talk to working time. However, the uncontradicted testimony of employee Williams shows that Hughley's remarks were prompted by the fact that the argument about the Union had continued after the bell to resume work had rung, and some of the girls were not at their machines. In this context, and considering also the spontaneity and informality of the announced prohibition, we are of the opinion that although Hughley did not *specifically* limit his prohibition of union talk to working time, such was his real purpose in order to prevent a recurrence of the interference with production which had just taken place, and the employees so understood his announcement. We find, therefore, that Hughley in effect promulgated a valid rule against union talk during working time.[13] Moreover, Hughley's accompanying statements about not trying to get any more work or contracts for the plant must also be viewed in the light of these surrounding circumstances. When so viewed, we believe that the most reasonable construction which can be placed upon those statements is that Hughley was trying to get more contracts so that the employees would continue to have work, but if the employees were going to talk about the Union during working time without a proper regard for their work as they had just done, and in violation of the prohibition thereon which he had just announced, he would not try to get any more contracts.[14] Thus, these statements of Hughley were not threats of reprisal in the usual sense for any general union activity of a protected nature that the employees might

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[13]See cases cited in footnote 12, *supra*.
[14]See the testimony of employees Brooks and Williams to this effect, set forth above.

engage in, but were rather in the nature of statements of the disciplinary measures which Hughley would take for a violation of the valid rule against union talk during working time which he had just promulgated, and as such these statements were not unlawful.[15] Accordingly, we shall dismiss the allegations of the complaint that Superintendent Hughley promulgated an unlawful "no-solicitation" rule, and in connection therewith also made unlawful threats of reprisal.

4. The Trial Examiner failed to consider paragraph 19 of the complaint, which alleged that Respondents, by their supervisor and agent, Morris Scharff on or about December 5, 1957, promised a laid-off employee that she would be given a job if the Union did not become the representative of their employees, in violation of Section 8 (a) (1).[16] As factually found by the Trial Examiner, the credited testimony of employee Lucille Yancey shows that on December 5, 1957, the day following her discriminatory discharge, Yancey visited Morris Scharff to inquire about her job and the cause of her discharge, at which time Scharff first admitted in effect that Yancey's Union activity was the reason for her discharge and for that reason he would not put her back to work, but

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[15] As the Board stated in *Peyton Packing Company, Inc., supra*, "The Act, of course, does not prevent an employer from making *and enforcing* reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate *and enforce* a rule prohibiting union solicitation during working hours." (Emphasis supplied.)

[16] We agree with the Trial Examiner's recommended dismissal of the allegation of the complaint which he designates as paragraph 19, but which should properly be designated as paragraph 20 of the complaint. The Intermediate Report is hereby corrected in that respect.

crimination against her, as provided in the section of the Intermediate Report entitled "The Remedy";

(b) Make whole Nellie Wood, Violet Ewing, Grace McCart, Pearl Coker and Nellie Hood for their respective loss of earnings as a result of the discrimination against them, as provided in the section of the Intermediate Report entitled "The Remedy";

(c) Preserve and make available to the Board or its agents, upon request for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right to reinstatement under the terms of this Order;

(d) Post at their plant or plants in Loganville, Georgia, copies of the notice attached hereto and marked Appendix.[18] Copies of said notice to be furnished by the Regional Director for the Tenth Region shall, after being duly signed by Respondents, be posted immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Respondents shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material;

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[18]In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(e) Notify the aforeaid Regional Director in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith:

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D. C., Oct. 21, 1959.

Philip Ray Rodgers, Member

Joseph Alton Jenkins, Member

John H. Fanning, Member
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, by discharging, laying off, or refusing to reinstate any of our employees or in any other manner discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT threaten our employees with discharge, shutdown of the plant, or with any other economic sanction to discourage them from joining or assisting labor organizations or engaging in other concerted activities for mutual aid or protection.

WE WILL NOT follow or otherwise engage in surveillance of union organizers or agents, or create the impression of engaging in surveillance of union meetings.

WE WILL NOT coercively or otherwise unlawfully interrogate our employees regarding their union membership or activities.

WE WILL NOT condition the reemployment of laid off employees upon a union not becoming the representative of our employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to LUCILLE YANCEY, RUTH BROOKS, LELA BEAVER, BONNIE HAMILTON, PAULINE McGEE, IDA HARPER, FRANCES ELIZABETH POWELL and EVELYN HUDSON, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL also make whole NELLIE WOOD, VIOLET EWING, GRACE McCART, PEARL COKER AND NELLIE HOOD for any loss of pay suffered by them as a result of the discrimination against them.

All our employees are free to become or remain or to refrain from becoming or remaining members of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

WALTON MANUFACTURING COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

Dated _____ By _____
(Representative) (Title)

LOGANVILLE PANTS COMPANY
(Employer)

This notice must remain posted for sixty (60) days from the date hereof and must not be altered, defaced, or covered by any other material.

LIBRARY

SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 77

[redacted] BOARD, PETITIONER

vs.

[redacted] COMPANY, ET AL.

[redacted] STATES COURT OF [redacted]

FILED JUNE 6, 1941.

OCTOBER 7, 1941.

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BEFORE THE NATIONAL LABOR RELATIONS BOARD
TENTH REGION

In the Matter of:

WALTON MANUFACTURING COMPANY
and Case Nos. 10-CA-3127
10-CA-3201
10-CA-3219
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

— — —

LOGANVILLE PANTS COMPANY AND WALTON MANUFACTURING COMPANY.
and Case Nos. 10-CA-3202
10-CA-3218
AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO.

Courtroom, Second Floor,
Walton County Courthouse,
Monroe, Georgia.
Wednesday, October 15, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a. m.

BEFORE:
SAMUEL ROSS, Trial Examiner.

APPEARANCES:
ARTHUR C. JOY, ESQ.,
Peachtree-Seventh Building, Atlanta. Georgia; appearing on behalf of General Counsel.

JACOB SHEINKMAN, ESQ.,
15 Union Square, New York City, New York; appearing on behalf of Amalgamated Clothing Workers of America, AFL-CIO, the Charging Party.

ROBERT T. THOMPSON, ESQ.
615 Rhodes-Haverty Building, Atlanta, Georgia; appearing on behalf of the Respondents.

* * * *

[43] I. S. PROSTERMAN

A witness called under Rule 43 (b) by the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[45] Q (By Mr. Joy) Mr. Prosterman, for the sake of simplifying the record later, I would like to get it in, the nickname by which you are commonly known.

A They call me "Murph" or "Mr. Murph."

TRIAL EXAMINER:
What's that?

[46] THE WITNESS:
"Murph" or "Mr. Murph."

Q (By Mr. Joy) Are you employed by Walton Manufacturing Company?

MR. JOY:

We have a stipulation to that effect.

Q (By Mr. Joy) What is your capacity, sir?

A I am plant manager.

Q As plant manager, do you have the authority to hire and fire?

A Yes, I do.

Q Do you make the selections of employees?

A Yes, I do.

Q Do you determine how many employees there should be and what they should do?

A Yes, I do.

Q As plant manager, what are your duties other than those just stated?

A Well, I direct the production of the plant.

Q And who is your immediate supervisor, if any?

A Mr. Arthur Scharff.

Q Do you know whether Mrs. Lucille Yancey, who is named in the Complaint, was discharged or was laid off?

A Would you be so kind as to tell me what the difference is? I mean, laid off with a stipulation of coming back, or — I would like to understand the question better.

Q Was it intended to be a permanent severance or a temporary [47] severance?

A It was intended to be a permanent severance.

Q Do you know why she was selected for such discharge?

A Yes, I do.

Q What was the reason, sir?

A She was incompetent.

Q In what respect?

A She could not achieve the quality standards that we require, nor was she able to achieve production standards, and there were other reasons. She was a difficult person to handle. Her supervisor could not cope with her. She resented correction by her supervisor and by me. When her supervisor came to me for assistance to see whether we could improve her as an operator, I found the same difficulty.

Q When did that happen?

A Well, for some time prior to her discharge.

TRIAL EXAMINER:

Your best recollection as to when it occurred, please?

THE WITNESS:

I would say several months prior to the discharge.

TRIAL EXAMINER:

You have referred to her supervisor; to whom are you referring, what name?

THE WITNESS:

Grace Higgins was her supervisor.

Q (By Mr. Joy) Did you discharge her, or did someone else discharge her?

[48] A No, I discharged her.

Q And when she was discharged, what reason did you you give her?

A That her quality was poor.

Q Did you tell her that she was discharged or merely laid off ?

A I can't recall right now if I told her one or the other. It was meant to be a permanent discharge.

Q Didn't you tell her that the reason was that there was no work for her, or lack of work?

A I can't recall. I don't believe so.

Q You are not sure?

A That is right.

Q You say you are not sure whether you did or?

A I'm not sure. I don't remember that.

Q What was the effect on her production of the alleged poor quality of work?

A I don't have the records at my fingertips, but she never made the production standard, or she never quite reached production standard, to my best recollection.

Q What do you mean by production standard?

A Well, she never made a dollar an hour. I say that, of course, that is my best recollection. I don't know exactly.

Q Do you have any policy about eliminating or retaining people who do not make the statutory dollar an hour minimum?

A No. I have no strict policy.

* * * * *

[61] Q Is it not true that in the weeks immediately preceding her discharge the amount of makeup was very small?

A I can't give you the answer to that. She wasn't discharged principally for makeup.

TRIAL EXAMINER:

What was she discharged principally for?

THE WITNESS:

Inability to produce the standard of quality that we required; and one very important reason was that she was an undesirable employee from the standpoint that she would not take correction kindly. She was the type of person that grumbled — complained of her fellow employees; in addition to the fact that she had makeup. She was, generally speaking, an unsatisfactory employee.

TRIAL EXAMINER:

You may continue.

Q (By Mr. Joy) Did you ever inform Mrs. Yancey that her work was not satisfactory as to quality or quantity?

A Personally.

Q Yes.

A Yes.

Q When?

[62] A Several times prior to her discharge. I cannot tell you the exact dates.

Q What did you inform her; that it was not adequate as to quality or as to quantity?

A Mostly from the standpoint of quality. I worked with her personally to try to bring her work up to par.

* * * *

[66] TRIAL EXAMINER:

On the record.

You are excused until tomorrow morning, Mr. Prosterman.

[67] The last witness has testified concerning makeup pay and since I am not familiar with your industry, or

term, will you two agree on a stipulation as to what make-up pay is for the record so that I take notice of what it means?

MR. THOMPSON:

If I may make this statement I think probably clear it up right quickly.

These operators in this plant, which is a garment plant — they manufacture men's suits and boy's suits — are paid on a piece rate. They are paid so much per item that they do. The makeup pay is the difference between what they earn by their piece rate and the minimum wage of a dollar an hour. In other words, the law requires we pay each one of them a dollar an hour straight time regardless of any piece rate we might have. When they fail to earn an eight-hour day or a forty-hour week, sufficient money to average a dollar an hour by their piece rate, then they are paid the difference because the minimum wage law requires it and the difference between what they made on the piece rate and what they actually were paid under minimum wage is the makeup pay.

TRIAL EXAMINER:

This is not something that has to be repaid to the company; it is just a term used to denote the degree of inefficiency, is that it?

MR. THOMPSON:

That is correct. In other words, if an employee makes thirty dollars on a piece rate for a forty-hour week, he or she would be paid an extra ten dollars to make the [68] necessary dollars per hour for the forty hours.

TRIAL EXAMINER:
The ten dollars would be the makeup pay?

MR. THOMPSON:
That is correct.

MR. JOY:
I agree with Mr. Thompson's statement; I do not agree with the Trial Examiner's characterization of it; that is that it is the measure of degree of inefficiency —

MR. SHIENKMAN:
I was just going to state that, sir.

MR. JOY:
It might well be a measure of the inadequacy of the piece rate.

TRIAL EXAMINER:
I understand that; I withdraw the term inefficiency. I wasn't intending to be controversial about it; I just wanted to get the thing straight.

MR. SHIENKMAN:
I would agree with that statement.

* * * *

GARVIN BIGGS
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[69] Q (By Mr. Joy) Mr. Biggs, are you known by any particular nickname?

A Yes.

Q What is that?

A "Woody."

Q What is your occupation, sir?

A I am in charge of organizing in the State of South Carolina.

Q For who?

A For the Amalgamated Clothing Workers Union.

Q What is the Amalgamated Clothing Workers Union?

A The Amalgamated Clothing Workers of America is an international union affiliated with the AFL-CIO.

* * * *

[70] Q Are you connected with the organizing campaign involving the employees of Walton Manufacturing and Loganville Pants Company?

A Yes, sir.

Q Are you the only member of the staff so engaged?

A No, sir.

Q Who are the others?

A Sarah Broom —

[71] TRIAL EXAMINER:

Spell those names, please.

THE WITNESS:

Sarah Broom, (spelling) B-R-O-O-M.

Noel Penny, Rachel Barnes, Mickey Eiger, that's E-I-G-E-R.

Q (By Mr. Joy) When did this organizing campaign begin, approximately, if you don't know exactly?

A I arrived on the scene November the 18th, 1957.

TRIAL EXAMINER:

Excuse me one moment. Are these four names that you have given us: Sarah Broom, Noel Penny, Rachel Barnes and Mickey Eiger, are they paid employees of the Amalgamated Clothing Workers?

THE WITNESS:

Yes; they are international organizers.

* * * *

[72] Q Did you ever see any of the people that I have been asking you about copying your car license number or any other car license numbers?

A I have.

Q Would you tell about it as best you can remember?

A On Saturday afternoon. November the 30th, we — I mean by we. Rachel Barnes — No, Rachel Barnes was not there — Noel Penny, Sarah Broom, Mickey Eiger and I was eating lunch in the Breeze Inn Drive-Inn in Loganville. It was about two o'clock in the afternoon. Also present in the Drive-Inn was Mr. Morris Scharff, "Mr. Murph," the man that I knew as "Murph," and J. B. Stephens. While we were eating, these three men got up and started out of the place. J. B. Stephens and Morris Scharff went out a side door

and walked around to three automobiles that was parked on the side, which was in our view; My car, Noel Penny's car and Sarah Broom's car.

Morris Scharff looked inside the car of Noel Penny. J. B. [73] Stephens, after pointing the three cars out to Morris, returned to the car that "Mr. Murph" had already gotten into in front of the building.

Q Had you finished?

A No.

Q Go ahead.

A Mr. Scharff had a piece of paper and a pencil in his hand; he stood behind each one of the cars, looking at the tag number and writing on the paper. When he got through, he came around in front of the building and started into the car.

I walked out to the front door of the place and I asked Mr. Scharff if he gotten the tag numbers of the organizers' cars. He said that he had. I then told Mr. Scharff that if there was anything else that he wanted if he would let me know, I would see if I could help him with it. Mr. Scharff, as I remember, didn't reply. They got into the automobile and drove off.

TRIAL EXAMINER:

Who is Mr. J. B. Stephens?

THE WITNESS:

Mr. Stephens was pointed out to me as an employee of Walton Manufacturing Company.

Q (By Mr. Joy) When the three of them drove off in the car together, as you have testified, who was driving that car?

A J. B. Stephens.

Q Do you recall what kind of car it was?

A It was a green 1956 Plymouth.

[74] Q When you and your group finished eating, what happened then?

A When we finished eating, we went out to my car and attempted to drive off. My car would not start and I got out and raised the hood of my car to try to find out what was wrong with it. Mickey Eiger was with me at that time. Across the street I noticed J. B. Stephens sitting in this same green Plymouth looking in our direction. He continued to sit there in the car until after we had driven off some 20 or 25 minutes later. He was sitting there when we left; and we drove to Greenville, South Carolina.

Q You say across the street; where across the street?

A In the parking lot across the street; in the American Legion parking lot and cafe.

Q Was anyone with him?

A No. He was by himself.

* * * *

[75] Q (By Mr. Joy) Did the Union hold any meetings in connection with the organization of the employees of Walton and Loganville Pants?

A Yes.

Q Where did you hold those meetings?

A The meetings were held at the Rosebud Community Clubhouse.

Q How many meetings did you hold, sir?

A We held three meetings.

* * * *

[77] Q I may have asked you this before; I'm not sure. How many meetings did you hold there?

A Three.

Q And do you recall the dates of those meetings?

A Yes. The first meeting was held December the 5th, the second meeting was held December 12th, the third meeting was held January the 9th.

Q These December dates being 1957, and January —

A January was in '58.

Q Did anyone attend those meetings other than employees of Walton and Loganville or members of their families, and other than members of your staff?

* * * *

[85] Q Between the time the organizing campaign began at Loganville and the time Mrs. Yancey was discharged, do you recall how many times you visited their home?

A Three times.

Q Can you place the dates? Tell just what happened.

A Yes; one of the staff took myself and Mickey Eiger --

TRIAL EXAMINER:

Just give us the dates and let's not have a speech about that. We want to get on with this case. He asked for the dates; let's have the dates, please.

THE WITNESS:

We was there the first time on Wednesday night before Thanksgiving, 1957; Friday night after Thanksgiving, 1957, and the following Monday night.

* * * *

[87] (The document heretofore marked General Counsel's Exhibit No 5 for identification was received in evidence.)

* * * *

[96] MILTON EIGER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[103] Q (By Mr. Joy)

* * * *

[104] Q All right, sir.

Can you tell us what a utility operator is?

A A utility operator is a person who is able to handle most any operation in the garment, and that person is more versatile than the average operator is, who is only skilled on one particular performance. Either they are pocket makers, sleeve makers, lining maker; a utility operator can do most anything to the garment.

Q Do you know Mrs. Lucille Yancey and her husband, Mr. Ethan Yancey?

A Yes.

Q Do you know if Mrs. Yancey worked for Walton Manufacturing Company?

A Yes, I know she did.

Q While she was so employed, did you ever go to her home?

A Yes.

Q Do you recall how many times; and when?

A I can remember three times, at least. It was right after I came into Loganville. It was the day before Thanksgiving; I believe that was Wednesday. I also saw her on a Friday after Thanksgiving; and on my return, I saw her that following Monday.

Q Were you with anyone at the time you went to her home?

A I was with "Woody" Biggs on three of the occasions, and I [105] think one of the other members of the staff — I don't recollect who — the first time — was with us.

Q Can you identify in this room anyone of the three Scharffs, Morris, Harry or Arthur?

A Yes, I was pointed out Morris Scharff this morning. He is sitting right there.

Q When was the first time you saw him, to your knowledge?

A I saw him quite some time ago in Breeze Inn, sometime around Thanksgiving, was the first time I saw the man.

Q What year was that?

A In 1957.

Q Can you tell what happened then?

A We were sitting there, the organizers and myself, the first time when Mr. Scharff and a few of his family came in.

TRIAL EXAMINER:

Which Mr. Scharff are you talking about?

THE WITNESS:
The Father and Mother Scharff.

TRIAL EXAMINER:
What's his name; Harry?

THE WITNESS:
That is right.

The second time I saw him was on the Saturday after Thanksgiving.

TRIAL EXAMINER:
You say you saw "him," who are you referring to?

THE WITNESS:
Morris Scharff, the man they call "Murph" — I think his name is Prosterman — and J. B. Stephens, that Saturday.

[106] Q (By Mr. Joy) Will you tell us what happened?

A The three gentlemen left the restaurant —

Q Which three?

A The three; Mr. Scharff, "Mr. Murph" and Mr. Stephens.

They went around and they copied down the license numbers of the cars that were parked on the outside, the organizers. When they walked around to the front after copying down the numbers, Mr. Biggs walked out the front door and asked them if he could help them in giving them the numbers, and Mr. Scharff answered, "It's okay, we already got all the numbers."

Q Did you see Mr. Stephens any more that day?

A Mr. Biggs was having a little trouble with his car that day and we were delayed. While standing outside, Biggs trying to repair —

Q Standing outside of where?

A The Breeze Inn.

We noticed a green car parked across the street by the American Legion Hall, and sitting in the car was J. B. Stephens. He did not move the car until we left. He stood there just watching what we believed was us until we left.

* * * *

[122] MRS. SARAH BROOM

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[123] Q (By Mr. Joy) Mrs. Broom, what is your occupation?

A I am a union organizer.

Q By whom are you employed?

A The Amalgamated Clothing Workers of America.

Q Have you been connected with the campaign to organize the employees of Walton Manufacturing Company and Loganville Pants Company?

A Yes, sir.

Q When did you first come in for that?

A I came in November the 21st, 1957.
Q Do you know Mrs. Lucille Yancey?
A Yes, sir.
Q Did you ever visit her home?
A Yes, sir.
Q Have you been there more than once?
A Yes, sir.
Q Do you recall when was the first time?
A Yes, sir.
Q When was that?
A November the 23rd.
Q Do you remember the day of the week?
[124] A Saturday afternoon.
Q What happened in connection with that visit?
A Well, when I went to visit Lucille, she wasn't home at the time, but her husband was there. He invited me in, and he called Lucille and he told me that — I told him that I was an organizer for the Amalgamated —
Q I don't want to get all that detail in. Let me short circuit it a little bit.

Did you solicit her to join the Union?
A Yes, sir.
Q Did she sign a card for the Union?
A Yes, sir.
Q At that time?
A Yes, sir.
Q Did she agree to do anything in connection with the organizing campaign?
A Yes, sir.

• • • •

【126】 Q Before you started working on this campaign at Loganville, did you know Mr. Morris Scharff, Mr. Harry Scharff or Mr. Arthur Scharff?

A No, sir.

Q During the time you were working on it, did you get to know them, who they were?

A Yes, sir.

Q Did you ever see any of them taking down — or apparently writing down license plate numbers?

A Yes, sir.

Q Who?

A Mr. Morris Scharff.

Q Do you see him in the room?

A Yes, sir.

Q Will you point him out?

A Yes, sir. That's Mr. Scharff (indicating).

Q When did that happen?

A It happened on a Saturday afternoon, November the 30th.

Q And will you tell us just what happened?

【127】 A Well, that Saturday morning I had been followed all morning.

Q Just stick to the question there.

A All right.

I came down to the Breeze Inn Restaurant to eat lunch and when I got to the restaurant, well, Penny and "Woody" and Mickey were in the restaurant eating, so I went in to join them. While we were in there Mr. Scharff, "Mr. Murph" and J. B. Stephens came into the restaurant and ate, too. When they got up to leave, Mr. Stephens and Mr. Scharff went out the side door and Mr. Stephens pointed out our cars and Mr. Scharff was writing, and I saw Mr.

Scharff look into Noel Penny's car. He came on around the front. In the meantime, "Woody" had got up, gone to the Breeze Inn door, and walked outside. The door was open, and he asked Mr. Scharff if he got our license numbers. Mr. Scharff said he had. "Woody" told him if there was anything else he needed, he would be glad to get it for him.

Q When Mr. Scharff and Mr. Stephens and "Mr. Murph" left, were they all in one car, or separate cars?

A They were all in one car.

Q Who was driving the car?

A J. B. Stephens.

Q Can you describe the car?

A Yes, sir. It was a 1957 Plymouth.

Q What color?

[128] A Green.

Q Were you ever followed by anyone in connection with your activities in organizing the employees?

A Yes, sir.

* * * *

Q (By Mr. Joy) Did you ever notice at any time in connection with your work that any employee or agent of either of the Respondents seemed to be in the vicinity everywhere you went?

A Yes, sir.

TRIAL EXAMINER:

Now, tell us about that.

When was the first time that you observed this?

THE WITNESS:
The first time I observed it was Saturday morning, November the 30th.

[129] TRIAL EXAMINER:
All right, now, describe when and under the circumstances under which this occurred.

THE WITNESS:
Well, I started out contacting that Saturday morning and —

TRIAL EXAMINER:
Contacting whom?

THE WITNESS:
Contacting employees of Walton Manufacturing Company —

I stopped before I got to this girl's house; I saw this green Plymouth behind me, driving slow. When I went in her home, he stopped up above, a good little distance above —

TRIAL EXAMINER:
How far is "a good little distance?"

THE WITNESS:
Well, I can't tell you exactly, but it was just across the road, up a ways.

TRIAL EXAMINER:
Was it further than the length of this courtroom?

THE WITNESS:
I would say about the length of this courtroom.

TRIAL EXAMINER:
And how far do you estimate that to be?

THE WITNESS:
I just couldn't tell you.

TRIAL EXAMINER:
Could we have a stipulation of the approximate length of about fifty feet, 45 feet?

MR. THOMPSON:
I'll stipulate as far as I'm concerned that is the approximate length of the courtroom, yes.

MR. JOY:
I'll go along with that. I don't know, either.

TRIAL EXAMINER:
Continue.

[130] THE WITNESS:
When I came out of her house and got in my car and drove off, he was behind me.

TRIAL EXAMINER:
That is the same car was behind you?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
Did you observe who was driving this car?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
Who was driving the car?

THE WITNESS:
J. B. Stephens.

TRIAL EXAMINER:
And what time of the day was this?

THE WITNESS:
This was in the morning, I would say between nine and ten o'clock. I can't say definitely, but I know it was early in the morning because I start to work around eight and I had ate breakfast.

TRIAL EXAMINER:
This girl's house — where did you go next from this girl's house?

THE WITNESS:
Well, I went to another girl's house.

TRIAL EXAMINER:
Did you observe the same car following you again?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
How far behind was he?

THE WITNESS:
He wasn't too far behind me.

TRIAL EXAMINER:
Well, I don't know what you mean by "too far." You are going to have to explain what you mean by "too far."

MR. JOY:
About how many carlengths?

[131] THE WITNESS:
I imagine he was about three carlengths behind me.

When I came out of this girl's house —

TRIAL EXAMINER:
This, of course, comes after you arrived at this girl's house. Where was he?

THE WITNESS:
Well, he parked up above me.

TRIAL EXAMINER:
How far away was he this time?

THE WITNESS:
About three carlengths up above me.

TRIAL EXAMINER:
Beyond the house?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
And you went inside?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
When you came out, was the car still there?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
Did you observe who was in the car?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
Who was it?

THE WITNESS:
J. B. Stephens.

TRIAL EXAMINER:
Where did you go from there?

THE WITNESS:
I went to another girl's house, called on her, and she

wasn't at home. So by that time it was lunch time and I went to —

TRIAL EXAMINER:

Was Stephens following you to this third girl's house?

THE WITNESS:

Well, he followed me, but evidently he turned [132] off, because I got to the third girl's house — I think he must have known she was working, because that's where she was that morning, working —

TRIAL EXAMINER:

Let's not guess what he knew.

THE WITNESS:

Anyway, she was working that morning.

TRIAL EXAMINER:

I'm not interested in that; I'm interested in what happened to the car.

THE WITNESS:

Well, I don't know, but I do know when I got to the restaurant, I was only in there a few minutes 'til he drove up with Mr. Scharff and "Mr. Murph" and the three came into the restaurant.

* * * *

[133] Q (By Mr. Joy) That afternoon, did you observe the same car again wherever you went, or did you observe Mr. Stephens in the vicinity wherever you went?

A Yes. sir. Mr. Stephen was behind me again that afternoon in my contacting, and after I knew for sure I was being followed —

TRIAL EXAMINER:

Let's not know for sure, because that again calls for a conclusion of your mind. You are going to have to tell us exactly what facts you observed upon which you came to that conclusion and we'll decide whether you were being followed or not.

Q (By Mr. Joy) How many places did you go in the afternoon?

A I went to three places in the afternoon.

Q When you went to the first one, did — while you were going there, did you see Mr. Stephens?

A Yes, sir.

TRIAL EXAMINER:

Where was he?

THE WITNESS:

He was behind me. but he passed me that time.

* * * *

[135] Q (By Mr. Joy) What kind of car was he driving at the various times you saw him that day?

A He was driving a 1956 Plymouth.

Q What color?

A Green.

Q Did you at any time get the license plate of that car?

A Yes, sir.

Q Do you know what the number was?

A Yes, sir.
Q What was it?
A 1-101919.
Q What state?
A Atlanta, Georgia — Georgia state.
Q Did you check on the —
A The license number?
Q Yes, ma'am.
A Yes, sir.
Q Can you tell just how you checked?
A I called the Tag Department in Atlanta, Georgia, and they told me that it had been issued to Morris Scharff of 3322 Roxboro Avenue.

* * * *

[145] MRS. FRANCES ELIZABETH POWELL
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[146] Q (By Mr. Joy) Did you ever work for Walton Manufacturing Company?
A Yes, sir.
Q When you were working there, were you married?
A No, sir. I was not.
Q What was your name by which you were known there?
A Frances Elizabeth Johnson.

* * * *

[148] Q (By Mr. Joy) When you were transferred to that last job, did you use the same machine that you had previously used or did you use the machine that Mrs. Yancey had used?

A I tried to use the machine that Mrs. Yancey used.

Q And what happened?

A The machine just wasn't any good, I don't guess. I couldn't use it.

Q What took place then?

A I asked "Mr. Murph" and Jerry if I could have my machine moved from the front back there.

Q Who is Jerry?

A He was my supervisor before I was transferred to Grace Higgins.

Q Jerry Carter?

A Yes, sir.

Q What happened when you made that request?

A They asked me if I really wanted it moved back there and I said, "Yes, sir," and they moved the machine back there.

* * * *

[149] Q When you were transferred to the new job previously done by Mrs. Yancey, what was said to you about your pay?

A They gave me a fifteen cent increase in my wages.

Q Who gave you that?

A Jerry told me that I would get it before I left up

there — he was my supervisor; he told me that they were giving me a fifteen cent raise to take Lucille Yancey's job.

* * * *

[150] Q After you were transferred to that job, did you increase the amount of work that you turned out, or did it decrease, or did it stay about the same, as time went on?

A I increased a little every day.

Q Did Jerry Carter at any time ever tell you that your work was not satisfactory?

A No, sir.

Q Did he ever tell you that you were not doing enough?

A No, sir.

Q Did Grace Higgins ever tell you that your work was not satisfactory?

A No, sir.

Q Did she ever tell you that you were not doing enough?

A No.

Q Did "Mr. Murph" ever tell you that your work was not satisfactory or that you were not doing enough?

A No, sir.

Q Did Morris Scharff ever tell you that?

[151] A No, sir.

Q Did any other supervisor in the plant ever tell you that?

A No, sir.

Q Did you sign a card for the Union, the Amalgamated Clothing Workers, to join the Union?

A Yes, sir. I did.

* * * *

[152] Q (By Mr. Joy) Did you ever hear Mr. Morris Scharff talk about the union?

A Yes, sir.

Q Was he talking to you alone, or to a group?

A No, sir. He never spoke to me.

[153] Q You mean he was speaking to a group?

A Yes, sir.

Q Where was that?

A That was held inside of the plant, the shop.

Q Can you place when that was?

A No, sir. I cannot.

Q Was that before or after you were transferred to Mrs. Yancey's —

A It was after I was transferred.

Q Do you recall how long afterwards?

A No, sir.

Q How many times did you hear him talk?

A I heard Mr. Morris Scharff make one speech.

Q Could you hear everything that was said — that he said?

A Did I hear —

Q Could you hear everything that he said?

A Yes, sir.

Q Do you remember everything that he said?

A Well, almost everything, yes, sir.

Q Tell us what you remember.

A Well, he got up and he had this — I guess you would call it a Dictaphone, or something — he said he was speaking for himself — not for himself, but for his brother and his father and he was speaking to us as a friend and not an employer. He said that he had worked — I think that he said he had worked with [154] the union in New York. He said if we signed the union cards — if we wanted —

that was up to us. We could do what we wanted to about that, but said that he would not have any part of the union.

* * * *

[155] A (By Mr. Joy) I show you General Counsel's Exhibit 5, which is a copy of a letter sent by the Union to the Company, and ask if you ever seen the original of that letter?

A Yes, sir. I have.

Q Will you tell where and when you saw it, and under what circumstances?

A Well, it was on a Monday morning, Mr. Morris Scharff brought the letter around to me and asked me was my name supposed to be on there, and I told him that it was. He said, "Well, if that's the way you want it." and put a check mark by my name and walked off, and went to some of the other girls with the letter; then later I saw it posted on the bulletin board with another strip of paper beneath it.

* * * *

[156] Q (By Mr. Joy) When you saw the letter posted on the bulletin board, did it have any check marks on it other than the one beside your name?

A Yes, sir.

* * * *

Q Are you still employed by Walton?

A No, sir.

Q When were you fired, or laid off?
A January the 31st.

* * * *

[166] Q Did "Mr. Murph" ever say anything to you about being a smart operator, a good operator?
A Yes, sir. He did.
Q What did he say, and when?
A Well, right after I was put on Lucille Yancey's job, Grace asked me to try to do a few more pairs a day than I did the day before, and I did, and "Mr. Murph" commented on it several times.

MR. JOY:
I have no further questions.

TRIAL EXAMINER:
What sort of comments?

THE WITNESS:
He said I was improving and I was doing fine.

* * * *

[161] Q Now, you state that Mr. Morris Scharff made this speech in the plant; is that correct?
A Yes, sir.
Q Was it made during the working day?
A It was, yes, sir.
Q Was the power turned off in the plant?
A Yes, sir. It was.
Q Did you receive any compensation for that time lost

while the speech was made? In other words, were you paid for it, or did you lose pay on your paycheck; do you remember?

A Yes, sir. I'm pretty sure we did get paid for it.

* * * *

[180] MRS. PAULINE McGEE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[181] Q (By Mr. Joy) Were you ever employed by Walton Manufacturing Company?

A I was.

Q When did you start there?

A August the 12th, 1957.

Q And who hired you?

A Mr. Morris Scharff hired me.

TRIAL EXAMINER:

What was that date, please?

THE WITNESS:

August 12th, 1957.

* * * *

[182] Q Who was your immediate supervisor?

A Mrs. Ewing, Myrtle Ewing.

Q On both jobs?

A Yes, sir.

Q Did she ever tell you that your work was not satisfactory?

A No, sir.

Q Did she ever tell you that you were not doing enough?

A No, sir. She didn't.

Q Who was the plant superintendent when you first started there?

A When I first started to work it was Mr. Hughley.

Q Did he ever tell you that your work was not satisfactory?

A No, sir.

Q Did he ever tell you that you were not doing enough?

A No, sir.

Q Was Mr. Hughley the superintendent of the plant throughout the time you were employed?

A No, sir. I think he left there—

Q Do you know what became of him?

A He went to the pants plant. It opened up, and then "Mr. Murph" took his place.

[183] Q Did "Mr. Murph" ever tell you that your work was not satisfactory?

A No; he was always patting me on the back, saying that I was doing fine.

Q Did Mr. Morris Scharff ever tell you that your work was not satisfactory?

A No, sir. He always said that I done fine.

Q Did Mr. Arthur Scharff ever tell you your work was fine?

A No, sir. Arthur never did come out and say nothing about my work.

Q Did any other supervisor ever tell you that your work was not satisfactory?

A No, sir.

* * * *

[185] (The document heretofore marked General Counsel's Exhibit No. 7 for identification was received in evidence.)

* * * *

Q Did you sign a card for, or join, the Union, the Amalgamated Clothing Workers?

A Yes, sir. I signed a Union card.

Q Did you attend any Union meeting at the Rosebud Community House?

A Yes, sir. I attended the first one and the third one.

Q Did you try to get other employees to join the Union?

A Yes, sir. I did. Going back and forth to work. I had some that rode to work with me. I didn't get any of them to [186] sign.

* * * *

Q (By Mr. Joy) Did you ever hear Mr. Morris Scharff make a speech in the plant?

A Yes, sir.

Q How many did you hear him make?

A Two.

* * * *

[187] Q (By Mr. Joy) Do you remember anything that was said by anyone?

* * * *

A In the first speech he said he wanted to explain the Union to us because he didn't think any of us knew anything about the Union, and that he had trouble with the Union for 19 years, he had been fighting it in New York.

* * * *

A He also said he wasn't telling us to vote for the Union or against it, but to do as we pleased, but he was not having the Union himself; if the Union came in, he wouldn't be there.

* * * *

[189] Q Who was your floorlady, or foreman?

A My floorlady?

Q Yes.

A Mrs. Myrtle Ewing.

Q Did she ever say anything to you about the Union?

A One time.

[190] Q When was that and what was said?

A Well, just right after the first Union meeting, after lunch. Two of the girls and myself had been talking about it at lunch; the bell rang and we started back to our machines; Myrtle came by our machines and says, "If you don't want to dig your own grave, you had better shut up talking about the Union."

Q I show you General Counsel's Exhibit 5, which is a

copy of a letter sent from Mr. Biggs to the Company, and ask you if you ever saw the original of that?

A Yes, sir. I have.

Q Will you tell when you saw it and who had it; what the circumstances were?

A Well, I saw it whenever Morris brought it by my machine. I don't know what date it was, to be exact. He got up by my machine and asked me if I had signed my name on that letter and I said, "Yes, I did," he said, "Do you know what that means?" and I said, "Yes, sir," and he said, "Well, all right, then." He wasn't smiling and I wasn't smiling. He went on to the other girls' machines

* * * *

[193] Q (By Mr. Joy) Did you see the letter again after Morris Scharff brought it to you?

A Yes, I did.

Q Where did you see it?

A It was posted on the bulletin board.

Q Were there markings on it when you saw it there?

A There was check marks, yes, sir.

Q Was there one beside your name?

A Yes, sir, there was a check mark beside my name, but by Jeanette Beaver's name there was a dash; there wasn't a check mark.

* * * *

Q (By Mr. Joy) Are you still working for Walton Manufactur- [194] ing Company?

A No, sir.

Q When were you terminated?

A The 31st day of January.

* * * *

[195] Q Have you been rehired by Walton Manufacturing?

A I have been back to try to get a job, but I didn't get one.

* * * *

[227] I. S. PROSTERMAN

resumed the stand and was examined and testified further as follows:

FURTHER DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) Mr. Prosterman, when you were on the stand yesterday we were exploring the reasons as to the [228] termination of Lucille Yancey. I believe one of the factors you said was that she continued to have make-up; is that correct?

A That's correct.

Q Is it not true that many other employees were receiving make-up pay at that same time?

A That's true.

Q Is it not true that many of them had to — had never made production at all, and had to have make-up pay every week?

A That's right.

Q Is it true that a good many of them continued to draw make-up pay week after week after that time?

A Yes.

* * * *

[232] Q Tell us whether Grace McCart was discharged or laid off.

A Grace McCart was discharged.

Q Do you know why?

A Yes.

Q Why was that?

A She was laid off — she was discharged because of poor quality.

Q Is that the only reason.

A That is the only reason.

Q When was she discharged, please?

A The early part of January. I believe it was January 10.

Q Did you ever warn Grace McCart prior to her discharge as to bad work?

A Grace McCart was warned constantly from the first day that I came here to work, about her work.

TRIAL EXAMINER:

The question was whether you had ever warned her. You don't answer the question, Mr. Witness. I'd like you to answer the question directly. Did you warn Grace McCart of poor quality.

THE WITNESS:

I, personally, no.

TRIAL EXAMINER:

Now, that's the question that was asked of you. Don't answer any other question than the question that is asked of you.

Q Who replaced Grace McCart when she was discharged?

A Mary Alice McWaters.

* * * *

[237] Q All right. Do you know why Pearl Coker was terminated?

A Yes.

Q And do you know whether she was discharged or laid off?

A She was discharged.

Q Why?

A Pearl Coker, as an operator, was unable to show the production [238] that we thought should be accomplished on that job and give us the quality required at the same time.

Q What was her job?

A Her job was setting collars.

TRIAL EXAMINER:

Setting collars?

THE WITNESS:

Setting collars.

TRIAL EXAMINER:

Collars?

THE WITNESS:

Collars, C-O-L-L-A-R-S.

Q Now what reason was there for terminating her at that particular time?

A I had two operators available who were capable of turning out production and earning a great deal more. And I thought that Pearl Coker was surplus.

Q Who were they?

A They were Hester Lee McCart who was on the job at that time and Louise Simmons, who was on leave of absence ready to come back at my request.

Q Isn't it a fact that Louise Simmons had quit some months before?

A That is true.

Q Isn't it a fact that Mary Lou Partain was working on that job at that particular time?

A Mary Lou Partain worked on that job only as we required her. Her status in our factory was that of utility operator, and was only put on the job when we required her. In other [239] words, she didn't work steady on it.

Q She worked on that most of the time at that particular time, did she not?

A At that particular time, I believe so.

* * * *

[241] Q Do you know whether Bonnie Hamilton was discharged or laid off?

A Bonnie Hamilton was laid off.

Q Do you know why?

A Yes.

Q Why.

[242] A I was instructed to cut back my production. And therefore, it was necessary to reduce the personnel in the factory.

Q Why was she selected?

A She was selected from this particular section because I thought that the remaining operator had a greater potential and was a better operator.

Q Who was the other operator that you refer to.

A Lucille Yancey. Another Lucille Yancey.

Q That is not the same Lucille Yancey that we have discussed before?

A That is true. That is not the same Lucille Yancey.

Q When was Bonnie Hamilton laid off?

A January 31.

Q Was her work satisfactory?

A Her work was satisfactory.

Q What operations did she perform?

A She performed the setting of the welts. Welt setting. That's the welt breast pocket.

TRIAL EXAMINER:

What was the date on that? Excuse me.

THE WITNESS:

January 31.

Q Is welt setting the same thing as sewing in welts?

A Sewing in welts. Setting in welts.

Q Did she do any pocket work?

A Some.

Q What kind?

[243] A Lower pocket setting.

Q Is that patch pockets?

A She had done patch pocket work. At that particular time I don't recall that — I don't believe there was.

* * * *

[244] Q Bonnie Hamilton was making production all right, was she not?

A Yes.

Q Did you have makeup pay for her?

A No.

* * * *

[245] Q Have any new employees been hired at all since the layoff of Bonnie Hamilton and others on January 31st?

A Yes; there have.

* * * *

[247] Q Do you know whether Pauline McGee's termination was a discharge or a lay-off?

A It was a lay-off.

Q When was she laid off?

A January 31st.

Q And do you know why she was selected to be laid off?

A Yes.

Q Why?

A She worked on an operation similar to another operation [248] that was done by another operator by the name of Charlotte Findley; both of the same nature and character. Under the cut-back I only required one girl on the job. I selected Charlotte Findley because —

TRIAL EXAMINER:

You mean you selected Mrs. McGee.

THE WITNESS:

I selected Mrs. McGee for lay-off and Miss Findley to remain on the job, because Charlotte Findley showed more progress and I felt had a greater potential than Mrs. McGee.

* * * *

[249] TRIAL EXAMINER:

Was Pauline McGee capable of doing both types of work?

[250] THE WITNESS:

Pauline McGee was capable of doing either job.

* * * *

TRIAL EXAMINER:

Was that the consideration that you took into account when you laid her off?

THE WITNESS:

Well, not entirely. As Mr. Joy asked me before, he said, "Was it a close choice?" It was. And therefore I had to take another thing into consideration, and that was seniority. Charlotte Findley had some seniority on Pauline.

* * * *

[251] Q (By Mr. Joy) Mr. Prosterman, is it not true that there was a difference in the operations performed by

Pauline McGee and Charlotte Findley in that did not Pauline have to measure vents and turn up vents?

A Yes. There was a difference in the operation.

Q And Charlotte Findley did not have to perform that operation; is that correct?

A No. That's right.

* * * *

[252] Q (By Mr. Joy) Do you know whether Mrs. Violet Ewing was discharged or laid off?

A She was laid off.

Q When?

A January 31st.

Q Why was she selected for termination?

A I required one girl to do two jobs. Prior to that I had two girls, one doing one job and one the other. This has to do with the nature of the work involved. Margaret Britt did the operation that was known as making up flaps. Violet Ewing made welts. I consider the making of flaps an operation which requires a higher degree of skill than the operation of making welts.

Q In what respect —

A Margaret — what's that?

Q Go ahead.

A Margaret Britt was a more exacting operator and I felt could absorb the operation of making welts faster than the reverse. In other words, I felt she could do Ewing's job better than Ewing could do Margaret Britt's job. Since this [253] is an operation that requires skill and the finished product is what I term the face of the coat; a detail which

requires exacting operator skill; I decided to retain Margaret Britt and lay off Violet Ewing.

* * * *

Q (By Mr. Joy) Did not Violet Ewing also have another operation, other than making welts?

A At that particular time both operators, Margaret Britt and Violet Ewing, divided between them an operation called the sewing of facings. Facing sewing — I believe you call it sewing of pocket facings, to be exact.

Q You say both of them did that?

A Both of them shared that work.

* * * *

[254] Q Who had the best record on production? That is, on the amount of make-up?

A Ewing. Violet Ewing had a better record than Margaret Britt.

* * * *

Q Do you know whether Ida Harper's termination was a discharge or a lay-off?

TRIAL EXAMINER:

Before you go away from that, I have a question to ask. Who has been doing the making of the welts and pocket facings since the lay-off of January 31st?

THE WITNESS:

The welts are being made by Margaret Britt. The pocket

facings are being sewn by Magdeline — but I don't remember her last name.

TRIAL EXAMINER:

You may continue, Mr. Joy.

[255] Q (By Mr. Joy) Is that Magdeline Baker?

A I don't know.

Q Do you know whether Ida Harper's termination was discharge or lay-off.

A It was a lay-off.

Q And when was she laid off?

A January 31st.

Q And why was she selected to be laid off?

* * * *

A . . . First of all, she was a girl who just would not produce properly. She was a girl who worked on the job six or eight hours that should have required only four hours. Her general attitude was poor in the factory. She had a bad absentee record. Geneva Harris was a girl who we felt had the experience required to carry both jobs.

* * * *

[256] Q You referred to a bad absentee record. How bad would you have in mind?

A I don't have the records available, sir, but I am sure that could be made available to you.

Q Do you mean she had a poorer attendance record than did other employees?

A Poorer than some.

Q Better than others?

A Better than others; yes. About which, I don't know. I don't have the records available.

THE COURT:

What was it about her absentee record that made you state she had an absentee record?

THE WITNESS:

Because when she was needed on the job, she wasn't there.

TRIAL EXAMINER:

Was that frequent or not frequent?

THE WITNESS:

That was frequent, but I don't have the exact dates.

TRIAL EXAMINER:

How long had this been going on?

[257] THE WITNESS:

Ever since she worked for us.

* * * *

[258] Q Did you ever warn her about absenteeism?

A No.

* * * *

[259] TRIAL EXAMINER:

You state Ida Harper was laid off partly because her general attitude was poor and also because of her bad ab-

sentee record .In what respect was her general attitude poor?

THE WITNESS:

Well, first of all, she had a very bad make-up record.

TRIAL EXAMINER:

Now is that what you mean by a bad general attitude; a bad make-up record?

THE WITNESS:

No. And she apparently did not take kindly [260] to requests from the supervisors for increasing her production.

TRIAL EXAMINER:

You say "apparently." Why do you say "apparently"?

THE WITNESS:

I say apparently because she didn't improve. After her supervisor was instructed to so admonish her.

TRIAL EXAMINER:

Now you are not talking about an attitude of the girl on her job, but rather about poor production; isn't that correct?

THE WITNESS:

Not necessarily. For this, I must — I can only tell you what her supervisors told me about this girl.

TRIAL EXAMINER:

What were the reports that you received about her?

THE WITNESS:

The reports that I received were she liked to play around. She wouldn't stick to her job. Spent a lot of time in the washroom. Talked excessively.

TRIAL EXAMINER:

Had she been warned about these things?

THE WITNESS:

Yes.

TRIAL EXAMINER:

On how many occasions?

THE WITNESS:

This, I don't know.

TRIAL EXAMINER:

Frequently?

THE WITNESS:

This I can also not say.

TRIAL EXAMINER:

On how many occasions did you instruct your supervisors to warn her?

THE WITNESS:

I cannot say how many occasions.

* * * *

[261] TRIAL EXAMINER:
Did you ever consider discharging her?

THE WITNESS:
We did.

TRIAL EXAMINER:
Why was she not discharged because of her bad attitude, and poor absenteeism, prior to the lay-off?

THE WITNESS:
This particular section was always in a state of flux and also a policy of the company regarding the quantity of production that was needed was also in a state of flux about this time. Sometimes we found it necessary to overlook certain things because let's say we needed the production from that particular section.

TRIAL EXAMINER:
Were there not other employees available in the area who could take over her work and whose attitude and attendance record would be better?

THE WITNESS:
No. For the reason that this is a special machine. This happens to be a machine which is difficult to learn.

* * * *

[266] Q Morris Scharff. All right. Let's turn to Elizabeth Johnson or Frances Johnson I believe she's sometimes

called. Do you know whether her termination was laid off or discharged?

A She was laid off.

Q When?

A February 31.

Q Why was she selected to be laid off?

A I had a section — she was in the lining section at the time. I had five people in that section. On some occasions I had another person — it was about five and one half people. I found it necessary to reduce my force by two operators. And since I felt that Elizabeth Johnson and Mary Barnes were the [267] least qualified in that section, I laid them off.

Q Who were the other three?

A The other three. There was Annie Brooks, Ima Jean Meeks, and Adell Barnes. And what I said about a part time operator was this Mary Lou Partain. She also did some work in the lining section.

Q Was Mary Barnes laid off at the same time?

A Yes.

Q Was Mary Barnes recalled?

A Mary Barnes was recalled. Yes.

* * * *

[268] Q Do you know whether Nellie Hood's termination was a layoff or a discharge.

A It was a layoff.

[269] Q When?

A January 31.

* * * * *

Q Why was she selected to be laid off?

A Under the cut back, the type of work that she was doing was easily absorbed by various people in the factory. She [270] performed the work — what we call floor work, she carried bundles and matched backs and fronts, matched pockets, and various other odd jobs. And we felt she was surplus.

TRIAL EXAMINER:

Was this a position that required very little skill?

THE WITNESS:

Yes, sir.

* * * *

Q All right, now. Do you know whether Evelyn Hudson's termination was a layoff or discharge?

A That was a layoff.

Q When was she laid off?

TRIAL EXAMINER:

Mr. Joy, when you are reading and your voice is down, I don't hear you. I didn't hear the name.

Q I'm sorry. Evelyn Hudson.

TRIAL EXAMINER:

Evelyn Hudson.

Q When was she laid off?

A January 31.

Q Why was she selected for termination?

A She was a member of the sleeve making section. She

did an operation known as sleeve tacking. It consists of sewing the [271] sleeve lining to the sleeve for a space of aproximately four inches on one side and five inches on the other. Her operation I considered a most mechanical — within the section the most easily learned by others. Therefore, in the face of the fact that I had to do this with a minimum amount of cost and retraining, she was selected and her operation was absorbed by the others.

* * * *

[274] Now, we come to Nellie Wood. W-O-O-D. Do you know whether her termination was a layoff or a discharge?

A It was a layoff.

Q And when was she laid off?

A She was laid off on January 31.

* * * *

[276] TRIAL EXAMINER:

When you say she was not considered a utility operator, is that a classification you personally gave in your own mind, or is that something which is reflected in some records of the company?

THE WITNESS:

Actually, what we classify as a utility operator depends on how we use them in the factory. How we use their services in the factory. If we have an operator to jump around from operation to operation, we put her in what we call the utility class because they can't possibly hope to earn what a person on the job would earn staying at a job steady.

TRIAL EXAMINER:

Does a utility operator get a different salary, different wage rate?

THE WITNESS:

They are paid by the hour rather than by the piece.

* * * *

[277] TRIAL EXAMINER:

I don't think that you ever completely answered the original question of Mr. Joy, and I'm not suggesting that it's your fault. I think Mr. Joy interrupted with another question. I don't think you actually ever answered the question as to why Nellie Wood was selected for layoff. You started by saying she did two types of work which two girls were doing [278] two thirds of the time. Now, would you care to complete your answer.

THE WITNESS:

Yes. Since on a cutback production program, I only needed the two girls on the job, she was surplus.

* * * *

Q Have they continued to handle all the work without help from others?

A No. But I must qualify that. May I do so?

TRIAL EXAMINER:

Yes.

A Johnnie Starrett has been able to handle her own work satisfactorily in quality. Laverne Bowen has had her

work increased since that time by the addition of a partial operation that was formerly done in a separate operation. That was known as bottom hem basteing.

TRIAL EXAMINER:
Bottom hem?

THE WITNESS:
Bottom hem basteing.
And since the inclusion of that particular portion of the operation, the consolidation of those operations, she has required help for approximately one third or one fourth of the day usually.

TRIAL EXAMINER:
Where did that help come from?

THE WITNESS:
That help came from another operator in the [279] plant who does the next operation to her. The second baster, Jerry — Geraldine — I can't think of her name. Jerry —

* * * *

[: 4] PAULINE McGEE
a witness previously called by and on behalf of General Counsel, having been previously duly sworn, was examined and testified as follows:

* * * *

[308] REDIRECT EXAMINATION

• • • •

TRIAL EXAMINER:

When did you go back to the Walton Manufacturing Company for employment?

[309] THE WITNESS:

That was in June. The last part of June. I talked to Morris and Mr. "Murph" and my floorlady, also.

TRIAL EXAMINER:

What is the name of the floorlady?

THE WITNESS:

Myrtle Ewing.

Q (By Mr. Sheinkman) You say you talked to Morris?

A Yes, sir.

Q What did he tell you about recalling you to work, if anything?

A He asked me if I had talked to Mr. "Murph". I told him I had. He said, "What did he tell you?" I said, "He said he would call me just as quick as they make more production." And he said, "Well, he will."

• • • •

[310] MRS. LUCILLE YANCEY

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) When did you start working for Walton Manufacturing Company?

A I started work June 28, 1957.

* * * *

[311] Q Did you make production so as to get out of makeup pay?

A Well, I didn't have work all the time to make production on. But when I got it, I could probably make one — it all depended on how the work —

Q I'm not referring to hours. On your weekly pay did you have makeup pay in your pay, or did you make more than a dollar an hour.

A I made more than a dollar an hour.

Q Who was your immediate supervisor?

A Mrs. Grace Higgins.

Q Did she ever tell you that your work was not satisfactory?

A No. She never did.

Q Did she ever tell you that it was satisfactory?

A Well she would keep telling me that I had improved.

Q Did she ever refer to any reports that she made to Mr. Morris Scharff about your production?

A After production was set, she came by my machine and said they were pressing for more production. And she said "They won't have to worry about you". And she said there was another girl that she wouldn't have to worry

about. Said she knew I'd get mine and that was all she ever said.

* * * *

[314] Q And who did you say you spoke to about transferring?

A Arthur Scharff.

Q And did you tell him why you wanted to transfer?

A Yes. I told him that was what I was most experienced in and I felt I could make more money on serger than I could on the lining and facing job. And he told me there wouldn't be anybody transferred to the pants plant. And he said it takes brains to make coats and anybody can make pants.

TRIAL EXAMINER:

Where did this conversation take place?

THE WITNESS:

Up towards the front close to the main office.

TRIAL EXAMINER:

You mean at the Walton Manufacturing Company Plant?

THE WITNESS:

Yes.

[315] Q (By Mr. Joy) Did you join a union or sign a card for a union?

A Yes.

Q Do you remember when?

A It was one Saturday afternoon, but I don't know the date.

Q Do you remember the month?
A November.
Q Where did you do so?
A At my home.

* * * *

Q Are you still employed by — have you ever been discharged by Walton Manufacturing Company?
A Yes.
Q When were you discharged?
A December 4.
Q While you were employed there before that date did you ever hear Mr. Morris Scharff make a speech to the employees at the plant?
A Yes.
Q When was that with reference to the date of your termination?
A December 3.
Q Between the time you signed the card for the union and the date of your termination did any organizer visit your home?
[316] A Yes.
Q Who did so?
A Mr. Biggs and Mr. Ager and Sarah Druten.
Q Did they come only once or more than once?
A They came in succession about three times. And then just occasionally.

* * * *

Q Now, on December 4, in connection with your termination, tell what happened, what was said.

A Well, Mr. Murph came by my machine just about a quarter 'til quitting time and he told me he would like to speak to me a moment. And so I turned my machine off and got up and walked over to the table where he was. And he said "Lucille, I'm sorry to break the news to you, but I'm going to have to lay you off". I says, "Mr. Murph, why are you laying me off? And he said he [317] said they didn't have enough work and I told him, I said, "Well, I've made production two hours every day and the other time I just didn't have the work." And I told him we had worked hard to get better cooperation there and my husband was the first one in the council to stand up and make a move to give them their taxes free the first year. And I was placed on the personnel committee to solicit applications to get people to work for them. And I told him, I said, "I think it's bad to lay anybody off that had worked so hard for anything." And he asked me did I want to talk to Morris. And I said, "I sure do."

* * * *

[318] Q (By Mr. Joy) All right. Did you talk to Morris about that? After Mr. Mruph asked you if you wanted to talk to him?

A Yes, I did.

Q When?

A I went into his office that afternoon.

Q Same day?

A Same day. December 4.

Q Now, you say in his office. Is that a private office?

A Well, I would presume it was.

Q What happened there?

A Well, I told him that —

Q Was anybody else present?

A Yes. He called Doc Mitchell in. And he told Doc, says "Doc, I'm having to lay Lucille off due to the fact that there's not enough work".

* * * *

[319] Q Tell about any further discussion, if any, between you and Morris Scharff that afternoon.

A Well, I wanted to know why he was laying me off and he said due to the fact there wasn't any work. And that's when I told him I had made production a little that day, but I didn't have the work to make it all the time. And I told him that there must be some other reason that he was laying me off. And he didn't answer me on that.

Q Did you refer to the length of time that you had been working there?

A Yes. The only thing he did say, he said my work was bad. And I said, "Well, Morris, I've been here almost six months. Why are you telling me now about my work? Why wasn't I told before now and why did you keep me this long?

Q What did he say?

A He didn't say anything.

* * * *

[320] Q Did you talk to him in person after that?

A Yes.

Q When?

A December 5.

Q That's the day of your termination?

A Yes.

Q Where did you talk to him?

A In his office.

Q Was anyone else present at that time?

A No.

Q What was said that time?

A Well, I told him I wanted to talk to him about the job and why I was discharged and — so the first thing he did, he reached over and picked up a union paper and handed it to me, which I didn't know anything about what union, what kind it was or anything. He just handed me the union paper.

Q You mean in the nature of a newspaper or a hand bill.

A Well, I would say it was a little paper about this long [321] and about that wide.

TRIAL EXAMINER:

Did it have printing on it, typing on it, multigraphing on it, or what?

THE WITNESS:

Well, I didn't notice it that close. It was printed. I know that.

TRIAL EXAMINER:

It was printed.

A So I told him, I said, "Morris, that's another reason you are laying me off." And so he said, "Well, Lucille, I tell you, I've been informed that you and your husband have been working with the union organizers".

• • • •

[322] Q Did you ask for your job back at that time?

A Yes, I did.

Q What was said? What did you say and what was said in reply?

A He said that he didn't know whether I signed a union card or not. And I told him, I said, "Well, Morris, my job means more than being a member of the union, and if you will give me my job back, I won't vote for the union." I definitely told him I wouldn't vote for the union. And after he didn't give me my job back, of course, I had no other choice. I went on with the union.

Q What did he say when you said that to him? What did he say about giving you your job back?

A Well, he couldn't put me back to work.

* * * *

[323] Q (By Mr. Joy) After you told Mr. Scharff — Morris Scharff, that you didn't have to be for the union and you wouldn't vote for it if you could have your job back, let your memory go back to the situation and tell us as close as you can recall, just what he said.

TRIAL EXAMINER:

What did he say in answer to that?

A Well, he said he couldn't give me my job back.

TRIAL EXAMINER:

Did he say why?

THE WITNESS:
He said if the union didn't go in, he'd put me back to work.

* * * *

TRIAL EXAMINER:
Mrs. Yancey, were you ever told by any of your supervisors that the quality of your work was poor at any time while you were employed by Walton Manufacturing Company?

THE WITNESS:
No.

TRIAL EXAMINER:
Did Mr. Murph ever tell you that your work was poor?

THE WITNESS:
No.

[324] TRIAL EXAMINER:
Did Mrs. Higgins ever tell you that your work was poor?

THE WITNESS:
No.

* * * *

[341] PEARL COKER
a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) When did you start working for Walton Manufactruing Company?

A The 26th of July, 1957.

* * * *

[343] Q Were you ever laid off or discharged from Walton Manufacturing Company?

A Yes.

Q When?

A The 15th of January 1958.

Q At that time did anyone else work on the same operations that you did?

[344] A Yes.

Q Who were they?

A Hester McCart and Mary Lou Partain.

* * * *

Q During the period of your employment there did you ever hear Mr. Morris Scharff make any talk or speech to the employees in the plant?

A Yes.

Q How many times?

A Well, twice, as I remember it.

* * * *

A Well, he told us that he didn't have any part of the [345] company. That he didn't have — wasn't getting any salary. That he was acting as a spokesman for his father and brother. And that if the union came in, he didn't want any part of it. He hoped to have a part in the near future, but if the union came in, he didn't want any part of it.

* * * *

Q Was there anything said about whether or not they would recognize the union?

A Yes. He did say that they would close the plant, before they would recognize the union.

* * * *

Q Did you sign a card for the union or join the union?

A Yes.

Q Did you attend any meetings?

A Yes.

Q Where were they?

[346] A The Rosebud Community House.

Q How many meetings did you attend, there?

A Two.

Q Now do you know the dates of those you attended?

A Well, I didn't attend the first one. Let's see. The last one, I remember.

Q What was that date?

A The 9th of December — I mean January.

Q 1958?

A 1958.

TRIAL EXAMINER:
Was that January 9th?

THE WITNESS:
January the 9th.

TRIAL EXAMINER:
When was the first one?

THE WITNESS:
That was the last one.

TRIAL EXAMINER:
No; I asked when was the first one.

THE WITNESS:
I don't remember.

Q (By Mr. Joy) Who was your forelady?

A Grace Higgins.

Q Did she ever talk to you about the union?

A No.

Q Did you talk to her about it?

A No.

Q Any discussion at all between you about union meetings?

A Well, on the 10th of January I told Grace Higgins that morning that I attended the union meeting the night before.

[347] Q Did she say anything in reply?

A Yes.

Q What?

A She asked who was in there that would want a union?

That the Scharffs had told them at their supervisory meetings that they would close their doors before they would work union labor.

Q Were you ever discharged from Walton Manufacturing Company, or laid off from there?

A Sir?

Q Were you ever discharged or laid off from Walton Manufacturing Company?

A Yes.

Q When?

A 15th of January.

Q Will you tell what happened at that time?

A Well, it was just a few minutes before 5:00 o'clock. Before time for us to check out, and Mr. "Murph" came and said that Morris wanted to see me in his office with "Murph."

Q Did you go?

A Yes.

* * * *

[348] Q And what was said, and who said it?

A Well, Morris told me that he was going to have to lay me off; discharge me.

Q Said what? Go ahead. Give the full —

A He said he was going to have to lay me off. That I wasn't doing enough work. That my work was satisfactory and it was nice, and they didn't find any fault with my work, but they just wouldn't need me any more, because I just didn't make enough money, and he wasn't going to have anyone in there unless they made 55 or $60 a week. And he said if one operator could do it, another one could.

Q What did you say at that time?

A I asked him if I couldn't do that on that job, would he give me a chance on something else.

Q Was there any reply to that?

A He didn't. "Murph" told me they didn't have anything for me to do in there.

Q Now while you were working there did Grace Mitchell ever tell you that you were not doing enough work?

A No.

Q Did Mr. "Murph" tell you that?

A No.

Q Who hired you?

A Morris.

Q Did he ever tell you before that day that you were not doing [349] enough work?

A No.

* * * *

TRIAL EXAMINER:

Did anybody tell you that you were not doing enough work?

THE WITNESS:

No.

* * * *

[350] Q (By Mr. Joy) Have you at any time returned to the employment of Walton Manufacturing Company since that time?

A Yes.

Q When?
A 7th of October.

TRIAL EXAMINER:
This year?

THE WITNESS:
This year.
Q (By Mr. Joy) And what kind of work are you doing now?
A I am sewing the collars on the coats.
Q Anything else?
[351] A No, sir.

TRIAL EXAMINER:
Is that the same work you were doing the last time?

THE WITNESS:
Yes.

• • • •

[358] VIOLET EWING
a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

[359] TRIAL EXAMINER:
State your full name and address for the reporter.

THE WITNESS:
My name is Violet Ewing. And I live in Loganville Route 2.

DIRECT EXAMINATION

Q (By Mr. Joy) When did you start work for Walton Manufacturing Company?

A June 28, 1957.

• • • •

[360] Q After you were put on production, did you have any makeup money in your pay?

A For a while; yes.

[361] Q About when; do you know? About when did you come out of make-up?

A I believe it was around the first of December, or the middle, anyway.

• • • •

Q Who was your immediate supervisor?

A Jerry Carter.

Q Did Jerry ever say that your work wasn't satisfactory, or that you were not doing enough?

A No.

Q Did Mr. Hughley or Mr. "Murph" ever say so?

A No.

Q Did Morris Sharff ever say anything to you about it not being satisfactory?

A No.

Q Any other supervisor?

(Witness shook head negatively.)

• • • •

[362] Q Did you sign a card for the union, or join the union?

A Yes.

• • • •

Q Did you attend any of the meetings at the Rosebud Community House?

A Yes.

Q How many?

A All three.

• • • •

[363] Q Did you ever hear any supervisor say anything about the [364] union other than the speech that Mr. Sharff, Morris Sharff made?

A One.

Q Who was that?

A Myrtle Ewing.

Q Myrtle Ewing. And —

TRIAL EXAMINER:

Is she any relation of yours?

THE WITNESS:

Sister-in-law.

Q (By Mr. Joy) Do you know when that was?

A I don't remember the date.

Q About when was it?

A Well, the organizers hadn't been in but two or three weeks, when it happened.

Q Was it before or after the first union meeting? Do you recall that?

A Before the first one.

Q What did Myrtle Ewing say about the union?

A She had asked me did I know that there were any organizers around, and I said that I did. She said "Morris said he didn't care how good an operator a girl was, or who she was; that he would fire her, if he found out she had joined the union."

* * * *

[365] Q (By Mr. Joy) I show you a copy of a letter, General Counsel's Exhibit 5, and ask you if you have ever seen it, the original of that letter.

A Yes.

Q Will you tell us when you saw that, and under what circumstances?

[366] A That one, particular one, Morris brought it to my machine one Monday morning, and asked me if my name was supposed to be on there, and I told him that it was.

Q Do you know the date when that occurred?

A It was on a Monday before the 31st. Now I haven't counted back.

Q What else, if anything, was said when he showed you the letter and asked if your name was supposed to be on it?

A I told him that it was, and he asked me did I still want to go along with them, and I said yes, and that was all he said.

Q Did he do anything while he was there?

A He checked my name with a pencil. He and his uncle.

Q Did you ever see the letter again?

A Yes.

Q Where?

A It was put on the bulletin board.

Q What did — what date did you see it there?

A At lunch time, the same day.

Q When you saw it there did it have any other check marks on it?

A Yes. Some of the other girls' names were checked.

Q Were there any other marks?

A One with a dash.

Q Who was that?

[367] A Jeanette Beaver.

Q Have you ever been terminated or laid off by Walton Manufacturing Company?

A Yes.

Q When was that?

A January 31, 1958.

Q Will you tell what happened at that time in connection with your lay-off or termination?

A Well, I was told by my supervisor to go to the office.

TRIAL EXAMINER:

Who was your supervisor?

THE WITNESS:

Jerry Carter.

A About ten minutes to 5:00.

Q (By Mr. Joy) Did he say whose office?

A Morris's. He wanted to see me in the office.

Q What happened when you got there?

A There were several of the other girls in the office when I went in. Then Mr. "Murph" came in, and Morris, and

Mr. "Murph" said due to a drastic cut in production, they were going to have to let some of us girls go. And during the time one of the girls — I don't know who it was — asked if it was just temporary, and at the time "Murph" said it was temporary. Then some of the girls kept pressing him how long would it be, or when we would be back, and he said, "Well, definitely, for the time being, it was definitely permanent."

• • • •

[375] TRIAL EXAMINER:
Before you cross examine, Mr. Thompson, I have one or two questions I want to ask this witness.

You stated that you joined the union — did you state the date — the approximate date when you joined the union?

THE WITNESS:
I believe it was before Thanksgiving.

TRIAL EXAMINER:
Before Thanksgiving. And after you joined the union, did you solicit others to join the union?

THE WITNESS:
No.

TRIAL EXAMINER:
Did not solicit anybody to join the union?

THE WITNESS:
No.

TRIAL EXAMINER:
You did say something about talking to others about the union. Was that soliciting them to become members?

THE WITNESS:
Well, I was just talking for the union. I didn't ask them to join it.

TRIAL EXAMINER:
And you say you didn't solicit. You mean you didn't —

THE WITNESS:
Hand out a card, no.

TRIAL EXAMINER:
But you did suggest that they should join the union?

THE WITNESS:
I admitted I liked the idea.

TRIAL EXAMINER:
And you suggested that they ought to join it?

[376] THE WITNESS:
Yes.

TRIAL EXAMINER:
Is that right?

THE WITNESS:
Yes.

TRIAL EXAMINER:
That's all.

• • • •

[385] GRACE McCART

A witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

Q (By Mr. Joy) When did you first start working for Walton Manufacturing Company?

[386] A June 27, 1957.

• • • •

[387] Q What kind of machine did you use for that?

A A Lewis blindstitch.

Q What do you mean by blindstitch?

A It's a machine that stitches one layer of material to the next without going through the bottom layer.

Q I see. Is that a difficult machine to operate?

A Yes.

Q As compared to a straight sewing machine?

A Yes.

Q Did your machine operate satisfactorily?

A No, sir.

Q What happened? — What was wrong with it?

A Well, it would skip places in the collar and wouldn't

fasten to the coat — wouldn't fasten the under-collar to the coat.

[388] Q Did you ever report that to your supervisor?

A Yes.

Q Who was your supervisor?

A Myrtle Ewing.

Q Did you report it just once or more often than that?

A Many times.

* * * *

Q (By Mr. Joy) Going back to the date. Did you have the trouble at any one particular time, or was it spread over a long period of time?

A Over a long period of time.

[389] Q What period of time?

A Well, the whole time that I worked on that machine.

Q I see. How long was that?

A From June 27 to January 10.

TRIAL EXAMINER:

Did you work on the same machine all that period?

THE WITNESS:

No, not all.

TRIAL EXAMINER:

You are being asked when — how long a time did you work on this machine?

THE WITNESS:

Well, I started working on that machine about August — around the first of August.

TRIAL EXAMINER:
And you worked on the same machine until you were laid off?

THE WITNESS:
Yes.

TRIAL EXAMINER:
And when did you first experience trouble with that machine?

THE WITNESS:
When I first started sewing on it.

TRIAL EXAMINER:
And when did you first report to Mrs. Ewing that you were having trouble with the machine?

THE WITNESS:
When I first had the trouble.

TRIAL EXAMINER:
And what did you say to Mrs. Ewing at that time?

THE WITNESS:
Well, I showed her the work — the way the machine was doing.

TRIAL EXAMINER:
And what did she say to you?

[390] THE WITNESS:
She had the mechanic to come work on the machine to fix it.

TRIAL EXAMINER:
And did it stay fixed?

THE WITNESS:
No, sir.

TRIAL EXAMINER:
Did you report it again?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
How long after the first time?

THE WITNESS:
How long before the machine —

TRIAL EXAMINER:
How long after you reported it the first time did you report again that the machine was giving you difficulty?

THE WITNESS:
Maybe fifteen minutes or a half an hour.

TRIAL EXAMINER:
You mean the same day?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
After the mechanic went away?

THE WITNESS:
Yes, sir.

TRIAL EXAMINER:
Did the mechanic come back again?

THE WITNESS:
Yes.

TRIAL EXAMINER:
And did he fix it this time?

THE WITNESS:
No. He said he didn't know too much about this machine. He'd think he had it fixed and it wouldn't be fixed.

TRIAL EXAMINER:
How many times in all did you complain about this machine?

THE WITNESS:
I wouldn't have any idea. Every day for about [391] the first three months.

* * * *

Q Were you ever laid off or discharged from Walton Manufacturing?

A Yes.

Q When?

[392] A January 9, 1958. January 10.

Q 10th. Tell us what happened. Who discharged you and what was said?

A Mr. Murph discharged me. He came to my machine, told me that he was going to have to take me off that job. And I asked him why. And he said they were having too much bad work. I asked him if they were having enough bad work for me to be fired for, why wasn't the bad work brought back to me. And he said "Well, a lot of the collars have been sewn with the wrong color thread." And I told him that was the same color thread that I had used ever since I had been on that machine. And I asked him was he sure that was the reason he was laying me off. And he said "Yes."

Q Before that date, had Myrtle Ewing ever told you that your work was bad?

A No, sir.

Q Had Mr. Murph ever told you that your work was bad before that date?

A No.

Q Who hired you?

A Mr. Ewing.

Q Did he ever tell you that your work was not good?

A No.

Q Did Morris Scharff ever tell you your work was bad?

A No.

Q Did any other supervisor ever tell you that?

[393] A No, sir.

* * * *

Q After your discharge on January 10, did you talk to anyone at the company about your discharge?

A Yes.

Q Who did you talk to?

A I talked to Morris.

Q Morris Scharff?

A Yes, sir.

Q When?

A I called Morris on the phone on January 13th.

Q And what happened?

A I asked him — I told him that I wanted him to tell me why I was fired. And he told me to come down the next day and he would talk it over with Murph and for me to come down the next day and talk to him.

Q And did you do so?

A Yes, sir.

[394] Q Did you talk to Morris Scharff?

A Yes, sir.

Q That would be the fourteenth of January?

A Yes, sir.

Q And where did you talk to him?

A In his office.

Q Was anyone else present?

A No, sir.

Q Tell us, as fully as you can, what you remember of the conversation that took place at that time.

A Morris said he had talked to Murph. They had decided that we had too much trouble with the collars. I told him that I couldn't have done that much bad work because I didn't have makeup on my check at that time. And that no one had complained to me about my work being bad. And he asked me did I go to a union meeting on Thursday night. And I told him "Yes." And I told him that I didn't

think you were supposed to be fired for going to a union meeting. And he said "You wasn't." And I told him that I knew that was the reason. And he asked me who was at the meeting and I told him that I couldn't tell him. And I told him that a certain girl that worked in the plant came by for me to go. And he wanted to know what that girl's name was. And I told him I couldn't tell him.

Q Was there any further discussion between you as to the identity of the girl?

[395] A He asked me wasn't the girl that worked down below, the one that sews on tape. And I told him "No," that it wasn't her. And he said, "well, was it Annie Clark?" And I said "No, it wasn't Annie Clark." And he said well, he knew everybody that was at the meeting anyway.

TRIAL EXAMINER:

He was asking you about the name of the girl that suggested you go to the meeting?

THE WITNESS:

Yes. And I told him that I didn't know anything about it. That I had just gone to that one meeting. And he said, "Well, I can tell you the ones that's working the most for it."

TRIAL EXAMINER:

Was this the meeting of January 9?

THE WITNESS:

The one meeting that I attended. Yes.

TRIAL EXAMINER:

Was that on January 9?

THE WITNESS:

Yes.

[396] A (Continuing) And I told him that I didn't know who worked for the union and who didn't. And he said, "Ruth Brooks, Pearl Coker, Jeanette Beaver."

TRIAL EXAMINER:

What did he say about those three names?

THE WITNESS:

He said they worked the most for it.

* * * *

[402] Q Did you report that machine as giving you trouble?

A Yes.

Q Was it fixed?

A The mechanic worked on it.

Q Well, after he worked on it, did it work properly?

A No.

[403] Q And did that machine continue to give you trouble up until the time you were laid off?

A Yes.

Q So that at no time during the first term of your employment with this company did you have a machine that was properly operating; is that correct?

A That's right. Not for any length of time.

Q You mean it did work properly some time?

A Yes.

Q And at other times it did not.

A That's right.

* * * *

BONNIE HAMILTON

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

• • • •

[404] DIRECT EXAMINATION

Q (By Mr. Joy) When did you start to work for Walton Manufacturing Company?

A July 3, 1957.

• • • •

[405] A At first, when I was hired, it was on an hourly basis, and then it was put on production.

Q Did you make production?

A Yes.

Q Who was your immediate supervisor?

A Jerry Carter.

Q Did he ever tell you that your work was not satisfactory?

A No; he did not.

Q Or that you were not doing enough?

A No.

Q Did Mr. Hughley ever tell you?

A No.

Q Or Mr. "Murph"?

A No.

Q How about Morris Sharff?

A No.

Q Any other supervisor ever tell you your work wasn't satisfactory, or that you were not doing enough?

A No.

Q How soon after you started working on production did you make production.

A Well, I never did have any make-up on my check.

Q Did you ever see Morris Sharff out in the plant?

A Yes.

Q What did he do there?

[406] A He would go around to some of the jobs looking at them and commenting on the work.

Q Did he ever look at your work?

A Yes; he did.

Q Did he make any comment at any time?

A Yes. Not too long after I went to work he come around to my machine and examined my work and he said that my work was getting so good that he was going to have to quit looking at it.

Q Did you work with anyone else on the operations you were performing?

A Yes.

Q Who was that?

A Lucille Yancey.

Q And did she do the same kind of operations you did?

A Yes; she did.

Q Do you know which of you had more work returned for repair?

A Actually, I couldn't say.

Q So far as you know were any records of repairs kept?

A As far as I know, there were none.

Q Did each person do their own repair work?

A They were supposed to, but they didn't.

Q Well, will you tell us what happened? Why they didn't?

* * * *

[407] A Well, most of the time it would be brought back for me to do it because she didn't like to do that repair work. When we did that repair work it was knocked out of our regular work.

Q (By Mr. Joy) When you say she didn't like to do it; who didn't?

A Lucille Yancey.

Q Is this the Lucille Yancey who was laid off and who is a part of this Charge?

A No.

Q Now so far as you know did she ever do any repair work on the work you had previously done?

A As far as I know, she didn't.

TRIAL EXAMINER:

Did you do any repair work on work that she had done?

THE WITNESS:

Yes; I did.

Q (By Mr. Joy) In addition to doing welts and patch pockets did you ever do any other kind of jobs?

A Yes.

[408] Q Such as what?

A When work was slow and we were short time, I put in flap pockets, bar-tacking, side-seams, and back-seams.

Q In so far as you know when you did those other operations did you do them satisfactorily?

A Yes.

Q Did any supervisors ever tell you that you weren't doing them satisfactorily?

A No; they didn't.

Q Did you ever hear Morris Sharff give a speech in the plant?

A Yes, sir.

Q How many times?

A Two.

Q Do you remember when they were?

A Not the exact dates.

Q Can you place the approximate date of the first one?

A Well, one was made before Thanksgiving, and the second one was made about the 1st of December.

Q Do you remember everything that was said?

A No.

Q Do you remember anything that was said?

A Yes.

Q Will you tell us what you remember of the first speech?

A Well, in the first speech he told us that he was making [409] a speech to us as a friend, and not as an employee, and he drew no salary whatsoever. And he was acting on the part of his brother and his father. And he told us that he had dealings in New York with the union, and he knew about it, and he was explaining to us what it was, and he said if the union wanted to get in bad enough, that they will try to sign what they call a sweetheart pact. Now what that is, I don't know.

Q Do you recall anything else that was said?

A Not on that particular speech.

Q Do you remember him saying anything about what would happen if the union was brought in by the employees?

A Well, he said if the union was brought in we wouldn't have him.

* * * *

[411] Q Other than the speeches made by Morris Sharff, did you ever hear him or any other supervisor mention the union to any employee?

A On one occasion, I did.

Q Can you tell when that was?

A Well, it was somewhere after the first speech, because I went during the break to get a coke and I overheard Morris tell J. B. Stevens that he would close the shop before he would let the union come in.

TRIAL EXAMINER:

Where was this?

THE WITNESS:

In the plant.

TRIAL EXAMINER:

Who is J. B. Stevens?

THE WITNESS:

He is the janitor. He sweeps the floor, and does odd jobs I guess is what you would call him.

Q (By Mr. Joy) Had Stevens ever said anything to you about the union?

A Yes.

Q When was that, and what was said?

[412] A Well, I don't remember when it was, but he was locked up one day for having been reported for driving a stolen car, and when he came back to the plant he came over to my machine and was talking and said that the damn union women had him locked up.

I said they weren't to blame for everything that happened. I said if he wouldn'e be following them all the time he wouldn't get locked up.

He said the Sharffs paid his salary and he would do what they told him.

Q Did you attend the union meetings at the Rosebud Community House?

A Yes; I did.

* * * *

[413] Q (By Mr. Joy) I show you General Counsel's Exhibit 5, which is a copy of a letter sent by the union to the company, and ask if you have ever seen the original of that letter.

A Yes, sir; I have.

Q Will you tell when and under what circumstances? You — who had it? If anything was said.

A I don't remember the date, but Morris came to my machine one Monday morning and he asked me if my name belonged on [414] that letter, and I told him that it did. And he said, "Well, all right."

Q Did he say anything more at that time?

A At that time, he did not.

Q Did he do anything? Make any markings on the letter, or anything of that nature?

A Yes.

* * * *

Q Did you see the letter again?

A Yes; I did.

Q When?
A He tacked it on the bulletin board.
Q When you say "he," who do you mean?
A Morris.
Q You saw him put it up?
A Yes; I did.
Q Were you ever discharged or laid off by Walton Manufacturing Company?
A Yes.
Q When?
A January 31st.

* * * *

[432] MRS. IDA HARPER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[433] Q (By Mr. Joy) When did you start working for Walton Manufacturing Company?
A It was in July, around the 17th. I don't know the exact date, of 1957.

* * * *

Q And when you were actually hired and put to work who told you that you were being hired?
A Morris.
Q What kind of work did you do?

A I hemmed the lining to the coat.

Q What kind of machine did you use for that?

A A Lewis felling machine.

Q Felling?

[434] A Felling.

TRIAL EXAMINER:

What was that?

Q Lewis felling machine.

Did you do that operation during your entire period of employment?

A Yes, sir.

Q Did you do any other kind of operations?

A When I would get caught up or sometimes if I worked hard on my job they would take me off and I would help Sarah Elizabeth to take out repairs, or something like that.

Q On your felling operation, were you paid by production or by the hour?

A Hour.

Q Throughout the whole time?

A Yes, sir.

Q Paid by the hour?

A (Nods head affirmatively)

Q You were not on production?

A No.

Q Is that Lewis machine that you were using a blind stitch machine?

A Yes.

Q Did it work properly?

A No, sir.

Q Did the company have a maintenance mechanic to take care of the machine or did you make your own adjustments?

[435] A Well, Jimmy, the mechanic that worked on the machines, did work on it. Sometimes he could fix it, sometimes he couldn't.

* * * *

[436] Q (By Mr. Joy) What operation immediately preceded yours in the production process?

A You mean the one that done it before I did?

Q No. In the operation before your operation, what was done with the garment just before you worked on it?

A The lining was basted down.

Q Who did that?

A Charlotte Finley. F-I-N-L-E-Y.

Q Do you know whether basting is more difficult, less difficult or the same difficulty as the operation you were performing?

[437] A I would say it was easier than what I was doing.

TRIAL EXAMINER:

You say that she basted the lining to the coat?

THE WITNESS:

Yes, sir.

Q Does the basteing machine use a bobbin?

A No, sir.

Q Did your machine have a bobbin?

A Yes, sir.

Q Did the basteing machine use the same color of thread all — throughout, or did it have to change colors of thread?

A The same kind of thread. The same color.

Q And your operation — did you have to change color, or could you use the same color all the time?

A Yes. I had to change.

Q Were you able to keep up with the flow of work coming from Charlotte Finley?

A Unless I was took off my job or the machine gave trouble.

Q If the machine was operating properly and if you were not taken off for other work, you mean you kept up with it. Is that correct?

A Yes, sir.

Q Who was your immediate supervisor?

A Myrtle Ewing.

Q Did she ever tell you that your work was not satisfactory or that you were not doing enough?

[438] A No, sir.

Q Who was the superintendent when you were hired?

A Mr. Hughley.

Q Did he ever tell you your work was not satisfactory?

A No, sir.

Q Did Mr. Murph ever tell you your work was not satisfactory?

A No, sir.

Q Did you ever see Morris Scharff in the plant?

A Yes, sir.

Q What did he do out there?

A Well, he'd walk around and I'd see him talking to the floor ladies.

Q Did he ever tell you that your work was not satisfactory?

A No, sir.

Q Did you join or sign a card for the union?

A Yes, sir.

Q Do you remember when?

A No, sir.

Q Did you attend any meetings at Rosebud Community House?

A Yes, sir.

Q How many?

A One.

Q Do you remember the date?

A No, sir. Yes, I do. It was January 9th.

Q Did you hear Morris Scharff make any speeches in the plant?

[439] Q Do you remember how many you heard?

A I know I heard one.

Q Do you remember everything — pardon me. Do you know when that was?

A No, sir. I don't.

Q Do you know how many speeches he made in the plant?

A No, sir.

Q The one that you heard, was that before Christmas or after Christmas?

A I believe it was before Christmas.

Q Can you tell us how much before Christmas it might have been?

A I guess it was around the 5th or 6th. Something like that. Around the first of December.

Q You mean around the 5th or 6th of December?

A Yes.

Q Do you remember everything that he said?

A No, sir.

Q Do you remember anything that he said?

A Yes, sir.

Q Will you tell us as fully as you can recall what was said?

A Well, he said that if the Union came in, that he would leave. That he was in one in New York and he would leave and we wouldn't have him. And that we had advantages now that we wouldn't have if the union come in.

* * * *

[441] Q I show you General Counsel's Exhibit 5, which is a copy of a letter sent by the union to the company and ask you if you saw the original of that letter?

A Yes, sir.

Q Will you tell us where and when you saw it and what was said?

A Well, the first time I saw it was when Morris came to my machine with it.

Q Can you place the date when he came in?

A No, sir. I don't know the exact date. I —

Q Beg pardon?

A I don't know the exact date. It was on Monday.

Q On Monday. Go ahead.

A And he came to me and asked me did I know my name was on there. And I told him "Yes." And he asked me if I wanted it to stay on there and I told him "Yes." He said "You know what this leads up to." And put a check by my name and walked out.

[442] TRIAL EXAMINER:

He said "You know what this leads up to"?

THE WITNESS:

Yes.

TRIAL EXAMINER:

What did you say when he said that?

THE WITNESS:

I didn't say anything. He walked off.

Q (By Mr. Joy) With respect to — withdraw that. Were you laid off at any time or discharged.

A Yes, sir.

Q When?

A January 31, 1958.

Q Now, how long before that date of termination was the conversation where Morris Scharff showed you the letter and asked you the questions?

A It was on Monday when he showed me the letter. It was on Friday when I got laid off.

Q Same week?

A Yes. If I'm not mistaken, same week.

Q Did you see the letter again after that?

A Yes, sir.

Q Where?

A On the bulletin board.

Q When?

A Same day.

Q Same day. Were there any markings placed on that letter?

A Yes, sir.

Q Now, will you describe those markings as best you can remember?

[443] A Well, all the names that was on there except three had a check by them. And Lela Beaver had been laid off. And Lucy Brooks wasn't there. And Jeanette Beaver's name had a straight mark by it.

TRIAL EXAMINER:

What do you mean by Lucy Brooks had been laid off? With reference to the work by her name?

THE WITNESS:

It wasn't Lucy Brooks. It was Lela Beaver. Lucy was out sick or something.

TRIAL EXAMINER:

There was no mark alongside her name? Is that it?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

As to what marks you saw on this letter — you saw marks — check marks — alongside of every name except two, is that right? And by one name you saw a line beside of it?

THE WITNESS:

Yes.

TRIAL EXAMINER:

Now, what were the two names that had no marks?

THE WITNESS:

Lucy Brooks. And I believe it was Lela Beaver.

* * * *

[450] CROSS EXAMINATION

Q (By Mr. Thompson) . . .

* * * *

[459] Q During the time that you were employed by this company, approximately how many coats did you turn out per day?

A Well, if I had them, some days I would do over 500.

Q On an average day, how many did you turn out?

A I wouldn't know. I mean, I just don't remember.

Q Were there many days that you turned out 500?

A Well, it was according to whether I had the work, or not, and how the machine sewed.

Q Now answer my question. Were there many days that you turned out more than 500?

A There was a good many.

TRIAL EXAMINER:

More than 500?

THE WITNESS:

Yes, sir.

• • • •

Q (By Mr. Thompson) . . .

• • • •

Q Now Mrs. Hamilton — I mean Mrs. Harper, isn't it true that at the time you were working at this plant that you spent a portion of your time while you were supposed to be working or while you were working, perhaps, talking and laughing and generally staying away from the work that you were supposed to be doing?

A Well now, when I wouldn't have anything to do, or if I was just about caught up, Myrtle would tell me to take my [460] time, or either go to the bathroom, or do something You know, she didn't have anything for me to do.

TRIAL EXAMINER:

You are talking about Myrtle Ewing.

THE WITNESS:

Yes.

• • • •

[469] NELLIE WOOD

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[470] Q (By Mr. Joy) Mrs. Wood, did you ever work for Walton Manufacturing Company?

A Yes, sir.

Q When did you start work there?

A Around the 5th of August of last year.

• • • •

[473] Q Who at Walton Manufacturing Company was your immediate supervisor?

A Myrtle Ewing.

Q Did she ever tell you that your work was not satisfactory?

A No, sir.

Q Did she ever tell you that it was satisfactory?

A Yes, sir.

Q What did she say about it?

A She just said I was doing good and Morris and Mr. Hughley thought I was a good operator.

Q When did she say that? Can you place the date?

A On several occasions.

Q Can you place the approximate date?

A No. I can't.

Q Was it shortly after you started to work there?

A Yes, sir.

Q — or much later?

A Shortly after.

[474] Q Did Mr. Morris Scharff ever tell — say anything to you about your work?

A No, sir. Only that he was pleased with it.

Q Did — pardon me, do you know when the date was or approximately when he said that to you?

A Mr. Scharff?

Q Yes.

A On nearly every occasion I talked to him.

Q And about how often would that happen — how often would that have been?

A I don't know.

Q Was it just one or two times? Or eight or ten times?

A Well, about four or five times, I imagine.

* * * *

[475] Q All right. Did Mr. Murph ever say anything to you about your work?

A No, sir. Nothing. Only that I was a good operator.

Q Can you place about when he said that to you?

A Well, I don't remember him saying it until about two weeks before I left from there.

Q About two weeks before you left — were laid off?
A Yes.

TRIAL EXAMINER:
You mean Mr. Murph did say that your work was satisfactory two weeks before he laid you off?

THE WITNESS:
Yes.

TRIAL EXAMINER:
Is that what you say?

THE WITNESS:
Yes.

Q (By Mr. Joy) Did you ever hear Mr. Morris Scharff make a speech in either of the two plants in which you worked from time to time?
A Yes, sir.
Q How many speeches did you hear?
A Two.
Q In which plant was the first one?
A Pants plant.
Q Pants plant. Can you place the date when that occurred?
A No, sir. I can't.
[476] Q In which plant was the second one that you heard?
A The Walton.
Q The Walton Manufacturing Plant?
A Yes.
Q Can you place the date of that?
A No, sir.

Q Did you join a union or sign a card for the union?

A Yes, sir.

Q Did you attend any meeting of the union?

A Three.

Q Three. Where were those meetings held?

A One of them at the Rosebud Community School House.

Q And the others?

A One at Lucy Brooks' and one at Violet Ewing's.

Q I see. Did you at any time talk to any of the employees about the union on behalf of the union?

A Yes, sir.

Q Where did you do that?

A In the parking lot at the Walton Manufacturing Company and in the pants plant at — at the Loganville Pants Plant.

Q When you say "at the pants plant", was that during working hours?

A No, sir.

* * * *

[478] Q Tell us as best you can remember the conversation between you and Mr. Hughley at that time.

A Mr. Hughley asked me was I getting utility pay. I told him I didn't know. I had got a raise, but I couldn't understand why I was shifted from one machine to another, when I could make more on one job. And he said that he could understand it very well. That I was a good utility operator.

Q Now, you say that you had gotten a raise?

A Yes, sir.

Q How many raises did you get?

A I got two.

Q Were you paid on an hourly basis or on piece work with minimum?

A Hourly basis. What I made over that I got paid for.

Q In other words, you got paid by the piece, but with an hourly minimum. Is that what you mean?

A I don't know. I know I got ten cents an hour plus what I made over that.

* * * *

[480] Q Now, when was the second raise?

A Two weeks before I was discharged.

* * * *

[481] Q (By Mr. Joy) I show you General Counsel's Exhibit 5, which is a copy of a letter sent by the Union to the Company, and ask you have you ever seen the original of that letter before?

A Yes, sir.

Q Will you tell us when you saw that? Who had it? And what was said?

A It was on Monday morning. Mr. Scharff had the letter.

Q Which Mr. Scharff?

A Morris.

Q And where was that?

A There in the plant.

Q While you were at work?

A Yes, sir.

Q Tell just what happened, please.

A He brought the letter to me and asked me if I knew my name was on it.

I told him, "Yes."

He asked me if I wanted it to stay on it.

I told him, "Yes."

He asked me if I knew the consequences.

I told him, "Yes."

* * * *

[482] Q Now when were you — pardon me. Have you ever been fired or laid off from Waltons?

A On the 31st of January.

* * * *

[484] Q Did you ever talk to Morris about going back to work?

A Not until about the middle of June.

Q And where did you talk to him about it?

A In his office.

Q At the plant?

A Yes, sir.

Q And what was — about what time of day was that?

A I went by there about 8:30, I guess, and he told me that you was coming and drop back by when you come in.

Q Did he say anything else in connection with that?

A No.

Q Did he say anything about the Charge?

A Just said I had a claim against them. And I told him I had asked to be out of there.

Q And then he told you to come back after I arrived there; is that correct?

A Yes.
Q Did you go back to work?
A The 23rd of June; yes, sir.

* * * *

[497] (The document heretofore marked General Counsel's Exhibit No. 9 for identification, was received in evidence.)

MARY ALICE McWATERS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

Give your name and address to the official reporter.

THE WITNESS:

Mary Alice McWaters, Box 63, Walnut Groove, Georgia.

DIRECT EXAMINATION

Q (By Mr. Joy) Did you ever work for Loganville Pants Company?
A Yes, sir; I did.
Q When did you start work there?
A Some time in October of '57.
[498] Q And what kind of work did you do there?
A I ran a Lewis blind stitch machine.

Q How long did you work for Loganville Pants Company?

A From October until some time in December.

Q And did you quit Loganville Pants Company, or just what happened at that time?

A Well, I was transferred from Loganville Pants Company to Walton Manufacturing Company.

Q Who transferred you?

A Mr. Hughley told me to go over.

* * * *

[503] Q What kind of a machine were you using for that? You may havve covvered that before.

A A. Lewis blind stitch machine.

Q When you started that operation were you given any previously sewed coats and collars to do over again?

A Not as I recall.

Q Did that Lewis blind stitch machine work satisfactorily?

A Yes. But at times it gave trouble.

Q How often?

A Well, maybe sometimes every two or three days. Maybe sometimes every day.

Q Did that continue throughout the period of — you operated on it?

[504] A Yes, sir; it did.

Q Did the mechanic work on the machine when it gave trouble?

A Yes, sir; he did.

Q Did he succeed in getting it fixed?

A He would get it fixed, and it would run good for two or three days, and it would break down again.

* * * *

[519] NELLIE HOOD

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) . . .

* * * *

[520] Q When you started, what was your rate of pay?

A Dollar an hour.

Q Did you ever get a raise?

A Yes, I did.

[521] Q When?

A I would say it was around two months after I went to work.

Q How much raise did you get?

A Ten cents an hour.

Q Who gave you the raise?

A Morris Scharff.

Q Did he tell you personally that you were getting the raise?

A Yes, he did.

Q Who was your immediate supervisor?

A Jerry Carter.

Q Did he ever tell you that your work was not all right?

A No. He did not.

Q Or that you were not doing enough?

A No. He did not.

Q Who hired you?

A Mr. Hughley.

Q Did he ever tell you that your work was not properly done or that you were not doing enough?

A No. He did not.

Q Did Mr. Murph ever tell you that?

A No. He didn't.

Q Did Mr. Morris Scharff ever tell you that — that your work was not properly done or not enough?

A No.

[522] Q Did your supervisor ever do so?

A No.

Q Did you ever hear Morris Scharff make a speech in the plant?

A Yes. I did.

Q How many did you hear?

A One.

Q Do you recall when that was?

A No. I'm not sure.

Q Can you place it approximately?

A Around September or December.

Q Beg pardon?

A Around the middle of September or the middle of December. I'm not sure.

Q That's a long ways apart.

A I meant November instead of September.

Q November or December.

A Yes.

Q Was it after the union organizers came to town, so far as you knew?

A Yes, it was.

Q Had you signed a union card?

A Yes, I did.

Q Had you signed one at the time he made his speech?

A Yes, I had.

* * * *

[523] Q You don't remember that. Did Jerry Carter ever say anything to you about the union?

A Yes, he did.

Q When was that?

A I don't remember the exact date.

Q Can you place about when it was?

A It was around — when the first speech was made.

[524] Q Could you say whether it was before or after the speech?

A I would say it was after.

Q Tell what happened. What was said?

A He came to me and asked me what I knew about the union. And I told him that I didn't know anything about it, to keep from discussing it with him because it was during working hours.

Q Were you working at the time?

A Yes, I was.

TRIAL EXAMINER:

Was that all the conversation you had with him?

THE WITNESS:

Yes.

Q May I have General Counsel's Exhibit 5, please?

I show you General Counsel's Exhibit 5, copy of a letter sent by the union to the company and ask you if you have ever seen the original of that letter?

A Yes, I have.

Q Will you please tell where and when you saw it and just what happened?

A The first time I saw the letter was the 27th of January when Mr. Morris Scharff brought it to me and asked if my name belonged on it.

Q Go ahead, give the full —

A And I told him that it did. And he said "Well, all right, then." and put a check by my name, and went to Bonnie Hamilton.

[525] TRIAL EXAMINER:

Is that all Mr. Scharff said?

THE WITNESS:

Yes, it was.

Q (By Mr. Joy) After that incident that you just told us about, did Jerry Carter say anything to you further about the union or about that letter?

A Yes, he did.

Q When?

A It was right after Morris brought it around and showed it to me.

Q What did he say?

A He come to me and said that I told him a story about the union.

Q Was that all it was?

A Yes. I walked off.

Q Were you ever — were you ever discharged or laid off by Walton Manufacturing Company?

A Yes, I was.

Q When?

A January 31.

* * * *

[526] Q Now, while you were working there on your job, including carrying bundles, did that include taking to employees work that was to be repaired or done over?

A Yes, it did.

Q Did you ever take any to Bonnie Hamilton or Lucille Yancey who worked with her?

A Most of the repairs were taken back to Bonnie.

Q Did you decide who to take them to or how did you know who to take them to?

A My supervisor told me who to take them to.

Q Jerry Carter?

A Jerry Carter.

Q Do you know whose work it was that was taken back to be done over?

A Well, when he brought the work to me to be ripped out, he [527] always said "This is more of Lucille's sorry doings".

TRIAL EXAMINER:

Lucille who?

THE WITNESS:

Lucille Yancey.

TRIAL EXAMINER:

Now, we've got two Lucille Yanceys in the record. Now. which one are we talking about?

MR. JOY:

This is the one who worked with Bonnie —

TRIAL EXAMINER:

I don't want your testimony. I want —

MR. JOY:

Oh, pardon me, you were looking at me and I thought you were asking me.

TRIAL EXAMINER:

Well, I was looking at you, sir, to clarify the record.

Q (By Mr. Joy) Was that the Lucille Yancey that was laid off or discharged, or the Lucille Yancey that was not?

A The Lucille Yancey that was not.

* * * *

[539] RUTH BROOKS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) Were you ever employed by Walton Manufacturing Company, or the Loganville Pants Company?

A Yes; I was.

Q Which one?

A Both.

Q With which one did you first work?

[540] A Walton Manufacturing Company.

Q When did you start there?

A The first day of July in 1957.

* * * *

[546] Q How were you normally paid? By production rate, with a minimum, or by a straight hourly rate?

A The best I recall I was paid by a minimum, at the beginning. But then we were put on a production rate.

Q Did you make production so that you didn't have to have a make-up?

A No; I didn't.

Q So far as you know, did anybody make production?

A I don't think so.

Q When you were doing repairs were you paid separately for that time, or was that just counted in on your full time?

A It was counted in my full time.

Q What effect did that have upon your production earnings?

A Well, it put me in a lot of make-up.

Q Did you discuss this, talk to any of your supervisors about that?

A Yes. Just before Christmas I talked to Mr. Hughley

about having so much make-up, and I said, "You remember what I have to do."

He said, "Yes; I know that." He says, "There are not but a few girls working here," and he says, "I know what each one are doing, and as long as I say nothing to you about your make-up, you have nothing to worry about."

* * * *

[547] Q Now after you began working in the pants plant, did you ever hear Morris Scharff make a speech there?

A Yes; I did.

Q How many?

A One.

Q Will you tell us what you heard, and what you remember of it?

A Well, he told us that he was like we were. That he was [548] employed by his brother. That he did not have any part in the company. And that he was speaking in his behalf. That it wasn't anything to him if we wanted a union, but there was one thing certain; if it came in, that he would go out. That he had worked in New York under a union, and he was tired of it, and that's why they came down here.

* * * *

Q (By Mr. Joy) Did he say what would be the result if the employees brought the Union in?

[549] A He said they would close the doors.

* * * *

[554] Q Did you sign a card for the Union, or join the Union?

A Yes; I did.

Q Did you attend any union meetings?

A Yes; I did.

Q How many did you attend?

A The best I remember I have attended six meetings.

Q Were you ever discharged or laid off by Loganville Pants?

A Yes; I was.

Q When was that?

[555] A The 16th day of January of '57 — 1958. I am sorry.

Q Now these union meetings that you attended, were they before or after you were laid off?

A I attended three meetings at Rosebud Community Clubhouse and I was discharged the week after the last meeting.

* * * *

Q I believe you said that Edna Atha was your forelady at the pants plant.

A That's right.

Q Did she ever talk to you about the union, or ask you anything about the union, or union activity?

A She asked me one day if the union people had been to see me, and I told her yes, they had. They had probably seen everybody by that time.

* * * *

[564] Q (By Mr. Joy) Will you tell us what happened the day you were discharged, please?

A Well, the day I was discharged, just before five, it was on Thursday, January 16th, Edna Atha, our floorlady, was giving out our checks. And she gave everybody theirs and came to me last and when she gave me mine she said "Ruth, Mr. Hughley wants to see you in the office after the bell rings." And so it kind of upset me, but I gathered myself together before I went in there. When I went in he asked me to have a seat and I sat down and he said, "Ruth, I hate to tell you [565] this, but I'm gonna have to let you go." And he said, "We've been checking over the records and we find that you have a good bit of makeup. You've been here for quite a while, and due to the fact that you do have makeup, we are going to have to let you go."

Q Was there anyone else present?

A No.

TRIAL EXAMINER:

What did you say when he told you that?

THE WITNESS:

I said — I told him, I said, "Mr. Hughley, I don't believe what you told me. I have talked to you about this matter and you told me that you knew what I was doing and that I had nothing to worry about." And then he said, "Morris made me do it."

Q What else happened? What else was said or happened at that time?

A When he said that he handed me my last check and I asked him if he had my discharge papers and he said "No, you will have to go down to the other plant to get

that." And I said well, "I won't get it if I go." And she said, "Why?" And I said, "Well, the other girls that have been discharged before me didn't receive theirs and I won't get mine either."

Q Was anything said by either of you about union activities?

A Yes. I told him that I knew why I was being discharged and he said, "Why is that?" And I said, "Because of union activities." And he said, "Well, you girls are paying too much [566] attention to this guy that came down from the north, giving you the piece rates on your jobs. And we can't afford to pay those rates that they pay up there."

* * * *

Q Did you go to the other plant about your separation notice?

A Yes. I called Morris Scharff — before this, let me go back, this comes to my mind. He said, "I will see that you get your separation paper." He said, "This plant belongs to Mr. Ruble. I operate it and I will see that you get your separation papers." I said, "Mr. Hughley, this plant belongs to Mr. Ruble and you operate it for him, how can Morris Scharff fire me?" He again said, "He made me do it."

* * * *

[608] LELA BEAVER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) Did you ever work for the Loganville Pants Company?

A Yes.

Q When did you start work there?

A It was about the third week in September in '57.

* * * *

[609] Q Who was your floor lady in working at Loganville Pants Company?

A Edna Atha.

Q What kind of work did you do there?

A Well, I set flies and turned corners.

Q Did you stay on that job alone, or did you do other jobs?

A No, sir. I could keep so far ahead on my job that they put me on different operations.

Q Did Edna Atha ever tell you that your work was not satisfactory?

A No, sir. She liked my work.

Q You mentioned Mr. Hughley, I believe. Was he in charge [610] there?

A Yes, sir.

Q Did he ever tell you that your work was not satisfactory?

A No, sir. He said, "I like your work and you could do your production if you could just get it."

Q Do you know when he said that to you?

A Well, he told me that about the third week.

Q About the third week after you started work?

A That's right

* * * *

[611] Q Did you ever hear Mr. Morris Scharff make a speech there in the plant—in the pants plant?

A Yes, he made a couple of speeches.

Q Do you recall when they were?

A No, I can't recall the date.

Q These speeches that were made in the Loganville Pants Company?

A That's right.

Q Can you give the approximate dates, what month they were?

A Well, I'd say one was in November. I'm not sure. I'd say one was in January.

Q I see. That's the best you can remember?

A To the best of my memory, yes.

Q Do you remember everything that Mr. Morris Scharff said?

A No, I don't.

Q Do you remember anything that he said?

A Well, he said he was tired of running.

Q Tired of what?

A Tired of running from the union.

TRIAL EXAMINER:

Suppose you tell us everything you remember that he said.

[612] A Well, —

TRIAL EXAMINER:

If he's tired of running from the union, what else did he say?

A Well, he promised us good work, said that he'd always gotten along with us. That he wanted to be nice to us. I can't remember everything he did say. But I do remember him

saying he was tired of running from the union. He had run his last time.

TRIAL EXAMINER:

Did he give you any indication as to what he meant by running from the union?

THE WITNESS:

To the best of my memory, he said that was why he came here.

Q Was there any reference to a plant at New York?

A Yes. He said—that was why he left New York?

Q What was why he left New York?

A The union.

Q Did he say anything about what would happen if the union came in the Loganville plant?

A He said he'd walk out the back door.

* * * *

[619] Q Were you ever laid off or fired from Loganville Pants Company?

A No, sir. Not since—the first time I worked there they laid me off.

Q Laid you off? When?

A It was about the last of January of '58.

* * * *

[620] . . . I asked Hughley why I didn't get one. He told me, said, "I don't know, but you can call Morris. Maybe he can tell you."

Q Morris Scharff?

A Right.
Q Did you do so?
A Yes, sir.
Q When?
A That afternoon.
Q Same afternoon?
A Yes.
Q Where did you call from?
A I called from the pants plant down to the coat shop.
Q And did you talk to Morris Scharff?
A Yes.
Q Will you tell us just what was said in the conversation?
A Well, he said I could come in Thursday and talk to him about it.
Q Did he say anything else that you recall?
A Well, I asked him why I didn't get a ticket for my machine and he said well, he didn't know, but he would talk to me Thursday. And I asked him if he was laying me off, why couldn't I get paid off. And he said, well, he couldn't pay me off. And [621] he said, "If you want to quit, come down here and I'll pay you off." And I said I didn't want to quit if he had a job for me. I want to work.
Q And did you talk to him after that?
A Yes. I went in on—it was either Thursday or Friday.
Q That's the same week that you were notified of the transfer of the machines, is that right?
A Yes.
Q Where did you talk to him?
A Down at the coat shop?
Q Yes.
A Well, I went to his office. I guess it was his office.

Q Was there any mention of the union? Any discussion between you and Morris at that time about the union?

A Yes.

Q What was said by whom? Just tell the full discussion.

A Well, I can't remember exactly what all was said. But I told him I knew why he was laying me off was because I was for the union.

TRIAL EXAMINER:

What did he say?

THE WITNESS:

Well, he didn't give me a direct answer.

TRIAL EXAMINER:

What did he say?

THE WITNESS:

Well, he'd split my job and give it to two other girls. If the union come in, he'd go out the back door.

* * * *

[642] NANCY WILLIAMS

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Joy) Mrs. Williams, did you ever work for Loganville Pants Company?

A Yes, sir.

* * * *

[646] Q Do you remember when Ruth Brooks was terminated? I don't mean I'm asking you to place the date, but do you remember the fact that she ceased to work there?

A Yes.

Q After she was terminated, were any new girls hired, to your knowledge?

A There was one girl. Yes.

Q Do you recall her name?

A Virginia is all that I know.

Q You don't know her last name?

A No.

[647] Q How soon after Mrs. Brooks' termination was this Virginia hired?

A Within a few days.

Q Do you know what kind of work she was assigned to doing?

A She was working on the back pockets.

Q What type of work did Ruth Brooks do before she was terminated?

A She was working on back pockets.

Q Did this Virginia operate a machine?

A Sir?

Q Did this Virginia who was hired—did she operate a machine?

A Yes, sir.

Q Do you know what machine she operated?

A She took Ruth's machine.

Q I see. Were you ever laid off or fired from Loganville Pants Company?

A Yes, sir. When the plant closed.

* * * *

[672] EVELYN HUDSON

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Joy) Mrs. Hudson, when did you start working for Walton Manufacturing Company?

A June the 25th, 1957

Q What jobs did you work on there?

A Well, I started putting on patch pockets. Then they changed me to sewing in darts, then I was changed to several other jobs. And then, finally, put on tacking sleeves and turning.

Q Was that your last regular job?

A That's right.

TRIAL EXAMINER:

What was that last job, please?

THE WITNESS:

Tack and turn sleeves.

Q About how long were you on that job?

A Well, I was on those other jobs, I guess, about two or three weeks. Then I was put on tack and turn the sleeves. And I worked on that unitl the 31st of January, '58.

* * * *

[673] Q (By Mr. Joy) Were you on piece work, or paid by the hour on that?

A Piece work.

Q Did you make production on that?

A I did.

Q How soon after starting your work did you start making production? About how soon?

A Well, I imagine it was about a month. I wouldn't say for sure.

Q Who was your supervisor?

A Grace Higgins.

Q Did she ever say that your work was not satisfactory or that there was not enough of it?

A No.

[674] Q Who hired you?

A Mr. Hughley.

Q Did he ever say that your work was not satisfactory or not enough of it?

A No.

Q Did Mr. Murph ever say so?

A No.

Q Did Mr. Morris Scharff ever say so?

A No.

Q Any other supervisor?

A No.

Q Did you join the union or sign a card for the union?
A I did.
Q Do you recall when?
A Well, I can't recall the exact date.
Q Approximately.
A But it was sometime around the—before Thanksgiving.
Q Did you talk to other employees about the union?
A Only one other.
Q Did you attend any meetings at the Rosebud Community House?
A All of them.

* * * *

[676] Q (By Mr. Joy) I show you General Counsel's Exhibit 5, which is a copy of a letter sent by the union to the Company and I ask you if you have ever seen the original of that letter?
A I have seen that. Yes.

TRIAL EXAMINER:
What was that answer?

THE REPORTER:
I have seen that.
Q Will you tell us where and when you saw that?
A I saw that letter on the bulletin board.
Q Did you see it before it was on the bulletin board?
A What was that?
Q Did you see it before it was on the bulletin board?
A No. I did not.

[677] Q Was the letter ever shown to you personally at any time?

A Yes.

Q By whom?

A It was shown to me by Morris Scharff.

Q Where and when?

A He brought it to my machine and asked ne if I had signed that—signed the letter. And I told him "Yes.", that I had. And he says, "Do you realize, Evelyn, that this could work a hardship on you?" And I told him "Yes", that I did. And he said that—he said, "Do you want to leave your name on this letter?" I told him, "Yes." And he walked off. Put a check mark by my name, and walked away.

Q Now, was that before or after you saw it on the bulletin board?

A That was before I saw it on the bulletin board.

TRIAL EXAMINER:

Just where was the bulletin board located in the plant?

THE WITNESS:

Well, the bulletin board was up towards the front.

TRIAL EXAMINER:

What was usually maintained on the bulletin board?

THE WITNESS:

Well, it was different statements—statements of the company that they wanted us to see and know about. And they put—this paper was on—they put it up there.

TRIAL EXAMINER:

Did anybody other the company put things [678] on the bulletin board.

THE WITNESS:

No, I don't imagine so unless it would be cards of thanks—thank you for flowers or something like that. Otherwise, the company always put them up there.

* * * *

Q (By Mr. Joy) Were you ever laid off or discharged from Walton Manufacturing Company?

A Yes, I was.

Q When?

A On January the 31st.

* * * *

[728] The document heretofore marked General Counsel's Exhibit No. 19 for identification, was received in evidence.

* * * *

[775] I. R. PROSTERMAN

recalled as a witness by General Counsel, having been previously duly sworn, was examined and testified further as follows:

FURTHER CROSS EXAMINATION

* * * *

Q (By Mr. Joy) Mr. Prosterman, when you were on the witness stand before, the question came up as to the number of employees in the plant, both before the lay-off and at the present time, and it was understood and agreed, as I understood it, that you were going to get those data and submit them to us. Do you have those data?

A Yes; I do.

Q Will you give us what the facts are in that respect?

A At the time of the lay-off, January 31st, there were 90 people employed in the coat operations.

[776] Q (By Trial Examiner) How many were laid off, of the 90?

A Now this, I do not have at hand. Those figures, though, are available.

MR. SHEINKMAN:

Mr. Examiner, I think the best evidence of this would be the production of Company records as to the number of employees employed in each department prior—

TRIAL EXAMINER:

Are you objecting to my question?

MR. SHEINKMAN:

Yes, sir.

TRIAL EXAMINER:

Overruled.

Q (By Trial Examiner) You don't have the answer?

A I don't have the answer at hand.

Q These were 90 people employed prior to the lay-off?

A Prior to the lay-off there were 90 people employed in coat operations.

Q At the time of the lay-off, how many people were employed in Loganville in the pants operation?

A This, I do not know.

MR. SHEINKMAN:

Sir, if I may point out to the Examiner that as of the 31st of January the pants operations had moved from the Loganville plant into the Walton plant, sir.

TRIAL EXAMINER:

I realize that.

THE WITNESS:

That's right, but I don't know the number of employees.

TRIAL EXAMINER:

Continue, Mr. Joy.

Q (By Mr. Joy) How many people are there presently employed [777] in coat operations?

A In the coat operation there are presently 77.

Q Going back to the previous figure: When you said 90 prior to the lay-off do you mean at the time of the lay-off?

A At the time of the lay-off. Prior to the lay-off.

Q The January 31st lay-off?

A That is correct.

Q (By Trial Examiner) Who decided what the extent of the lay-off was going to be?

A I did.

Q And you don't know how many people you laid off?

A No; I don't. I don't have those figures available. Approximately 20, in the coat operation.

TRIAL EXAMINER:

Go ahead, Mr. Joy.

Q (By Mr. Joy) Will you state for us what, if any, was the policy as to the application of seniority as a factor in determining who was to be laid off and who was to be retained?

A Yes; I would. In determining the people who were to be laid off, the first consideration was given to the type of operator I wished to retain.

Then, on a comparative basis, on a comparison between the operators, I wished to retain and the operators I wished to lay off, I took into consideration, first, quality. I wished to remain with the operator I believed best—the most competent to give me the best quality.

[778] Next in order, I took into consideration production. So therefore, the operator who could give me the best quality and the most production was to be retained.

When these factors were equal, or nearly so, then I took into consideration seniority, within the individual sections under consideration at that time.

Q What was the policy, if any, as to the effect of make-up in determining whether to repay an employee, or not?

A The effect of the make-up was not given consideration unless it was one of the factors, as I have explained previously, in determining the production, the comparative production between operators within the section. In other

words, make-up had no bearing unless it was one of those factors.

* * * *

[782] Q (By Mr. Joy) Did you, after transferring an employee from one duty to another to replace somebody who had been laid off, did you at any time teach that transferred employee a new operation? How to perform an operation?

A It was necessary in many cases, to teach them that operation.

* * * *

[788] Q (By Mr. Sheinkman) ...

* * * *

Q How many people were let go in January 1958?

A Approximately 20.

Q And didn't you say there were approximately 90 as of January 1958?

A That's correct.

Q So that would leave approximately 70; is that correct?

A That is correct.

Q Which means that there are seven more employed now; is that correct?

A That is correct.

Q Were these people new people?

A No. Not in all cases. Some were new people.

Q So you hired some new people; is that right?

A Yes.

[789] Q And had these people had any experience working on coats; these new people that you hired?
A No.

* * * *

[815] ARTHUR SHARFF
a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

* * * *

[846] CROSS EXAMINATION

* * * *

[851] MR. THOMPSON:
May I take this statement, Mr. Examiner? On this general subject? I think the facts are rather clear as to Morris Sharff's relationship here. Certainly I would be the last one to deny the facts which have been related are not true, even in the General Counsel's case with respect to the fact the man had an office out there, that he was around there all the time, that they were consulting with him, that he was there for that purpose. We have established that he was not an employee of this corporation. We have established he was not an officer or a director.

TRIAL EXAMINER:
Have you denied he was an agent? The question of what position he holds is not, in my view, particularly significant, but in view of your denial he is an agent of the company,

in connection with what he says and does, it seems to me that this is material testimony that we are talking about.

MR. THOMPSON:

We have denied he was an agent of this corporation; that is correct. I don't believe there is any evidence that he was an agent of this corporation. I am not aware of the fact that that's necessary in order to support [852] the Complaint. That's the position I am stating.

We have related the facts. We have made no contest, if the Examiner will recall, with these witnesses with respect to the activity of Morris Sharff at these plants. We haven't tried to deny it in any way.

TRIAL EXAMINER:

You are, of course, putting on your case now. The only thing I know is that your Answer denies that Morris Sharff is an agent of the union—of the company, rather

MR. THOMPSON:

I don't think there are any facts to support it. There have been no facts in the record to support that, either, as an agent of the company, On the other hand there are plenty of facts to show he acted in behalf of the corporation. He just simply was not an agent because he was not employed by them, he was not officially connected with them. Those are the facts, and there is no contest over them.

* * * *

[872] Q (By Mr. Sheinkman) . . .

* * * *

[873] A We ride back and forth to work every day.
Q Do you ride in a green Plymouth, 1956?
A Do I today ride in a green Plymouth?
Q Did you ever ride in a green Plymouth, 1956?
A Yes.
Q Who owned that car; you or Morris?
A Morris.

* * * *

[885] MYRTLE EWING
a witness called by and on behalf of Respondents, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

[886] Q (By Mr. Thompson) Mrs. Ewing, what is your job at the Walton Manufacturing Company?
A Supervisor.
Q When did you become a supervisor there?
A Oh, it was about week, I think, after I was employed.
Q When were you employed?
A June 27, 1957.

* * * *

Q Did Grace McCart ever work in your unit?
A Yes.
Q Was she under your supervision?
A Yes.

• • • •

[887] Q Was she ever laid off or discharged?
A Yes.
Q Do you know about when she was discharged?
A In January.
Q Do you know the date of her discharge?
A It was about the 15th. I am not sure.
Q Did you discharge her?
A Yes.
Q What were the reasons for the discharge?
A Her work was not satisfactory.
Q In what way was her work not satisfactory?
A Well, her sewing wasn't up to par.
[888] Q Was there any particular reason for the timing of her discharge?
A No. It was just a culmination of a lot of bad work.

• • • •

[889] Q Do you know an employee, a former employee, by the name of Ida Harper?
A Yes.
Q Did she work in your unit?
A Yes.
Q Was she under your supervision?
A Yes.

• • • •

[891] Q You say Ida Harper was discharged?
A Yes.

TRIAL EXAMINER:
Not laid off.

THE WITNESS:
That's right.
Q (By Trial Examiner) What was she discharged for?
A Well, Ida was a bit immature. She could have been a good operator. But she just wouldn't settle down and go to work.
Q Had you been having trouble with her before?
A Oh, yes. Continuously.
Q Had you talked to her about it?
A Yes. Daily.
Q What made you select that particular day for discharging her? What did she do on that day that caused you to discharge her?
A It was a culmination of bad work.
Q Now you didn't tell me anything about the bad work. I thought you said she was immature.

• • • •

[893] Q Was there any other factor which entered into the discharge, or the lay-off, or whatever it was, of Ida Harper?
[894] A Other than what I have already mentioned?
Q Yes, ma'am.
A No.
Q Did you have an employe named Pauline McGee who was under your supervision?

A Yes.

Q What was her operation?

A She basted the bottom hem.

Q Was she ever terminated?

A Yes.

Q What were the circumstances of her termination?

A The cut-back in the work.

Q And when did this take place?

A The 31st of January.

Q What factors led up to her being terminated, as opposed to other people?

A Well, we took in seniority, production, quality—

Q With respect to seniority, who did you prefer to her? What employees, if any, did you retain because of their seniority?

A Charlotte Finley.

Q I am referring to Pauline McGee now.

A Yes.

Q Did Charlotte Finley figure in Pauline McGee's operation, as well as the other girl?

[895] A It was—Charlotte had done the job. In fact, when she would catch up on a job, she did spend part of her time on Pauline's job at that time, and she knew the job, and she filled in on it as well as Geneva Harris.

Q (By Trial Examiner) Now you are talking about Pauline McGee's work.

A Yes.

Q (By Mr. Thompson) Who is doing that work now?

A The operation has been eliminated completely.

Q About when was it eliminated.

A Oh, some few weeks after Pauline left.

Q Did you have an employee by the name of Nellie Wood working under your supervision?

A Yes.

* * * *

[896] Q What were the factors that you took into consideration in determining whether she should be the one to be terminated, as opposed to other people doing that type work?

A Again it is seniority, production and quality.

Q How did her seniority compare to the other two operators whom you refer to as the regular operators?

A They were both there longer than that.

TRIAL EXAMINER:

You mean Starrett and Bowen?

THE WITNESS:

Starrett and Bowen; yes, sir.

Q (By Mr. Thompson) How did Nellie Wood's quality of work compare to the quality of the work of the other two regular operators?

A Well, it wasn't as good.

* * * *

[897] (By Mr. Thompson) Mrs. Ewing, referring back to Ida Harper, do you recall whether she was a regular employee, in attendance, or was she on the other hand absent from work a good bit?

A She had a good deal of absenteeism.

Q Did that have anything to do with the decision which was reached regarding her lay-off?

A Naturally.

[906] CROSS EXAMINATION

Q (By Mr. Joy) . . .

* * * *

[908] Q He was not. Now you say you talked to Ida Harper daily about what?

A Bad work and cutting. Cutting up in general.

Q Who was she talking to?

A Anyone that would listen.

Q Who could she talk to? Do you mean during working hours?

A Yes.

Q Was she not at her machine?

A Well, the operators around her.

[909] Q And who were they?

A Pauline McGee was in front of her. And Charlotte Finley to her left.

Q Just what was said to her in these daily talks about her bad work?

A It wasn't so much bad work, it was just a lack of work.

* * * *

[912] Q (By Mr. Joy) Referring to Nellie Wood, you said that seniority, production and quality were considered

in comparing between her and Johnnie Starrett and Laverne Bowen. How do you base the judgment as to quality?

A Well, when Nellie first came to work she needed a job. Her quality was good. But she did become a little bit sloppy.

Q Was she experienced on both the other two operations?

A Well, she had been on them the four months she was there.

Q She was performing both operations regularly; is that correct?

A Yes.

* * * *

[924] Q (By Mr. Sheinkman)

* * * *

[925] Q Did Nellie Wood perform more than one operation before she was let go?

A Yes.

Q Did Johnnie Starrett perform more than one operation?

A No.

Q So that Nellie Wood was more versatile than Johnnie Starrett.

A She was hired to do two jobs.

* * * *

[979] ODELLE BARNES

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Thompson)

* * * *

[980] Q Did you ever know Lucille Yancey?

A Yes; I did.

[981] Q Did Lucille Yancey ever work at the Walton Manufacturing Company?

A Yes, sir.

* * * *

[988] Q Did you ever overhear Grace Higgins, the supervisor, talking to Lucille about her work?

A No, sir.

* * * *

[1012] GRACE HIGGINS

a witness called by and on behalf of Respondents, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

Give your name and address to the reporter.

THE WITNESS:

My name is Grace Higgins. I live at Loganville, Georgia, Route 1.

DIRECT EXAMINATION

Q (By Mr. Thompson) Mrs. Higgins, I am going to ask you to speak loud and clear and slow, so all of us can hear what you have to say?

Are you employed by the Walton Manufacturing Company?

A Yes.

Q What is your job there?

A Supervisor.

* * * *

[1013] Q Have you ever had an employee by the name of Lucille Yancey?

A Yes.

Q Under your supervision?

A Yes.

Q Approximately when did she first come under your supervision?

A In July of '57.

Q And is she still under your supervision?

A No.

Q Is she still employed by the company?

A No.

[1014] Q When did she leave?

A She left the first part of December '57.

* * * *

Q (By Mr. Thompson) What were the factors which led to Mrs. Yancey's discharge?

TRIAL EXAMINER:

Are you referring to conversations she [1015] had?

MR. THOMPSON:

No, sir.

A Well, she did very bad work. She was uncooperative and very unruly.

* * * *

[1024] Q (By Mr. Thompson) Mrs. Higgins, did you ever have an employee named Pearl Coker under your supervision?

A Yes.

Q What job did Pearl Coker do?

A She set the collar on the garment.

Q What does that involve? What do you do, to set a collar?

A Put the collar—sew the collar onto the coat.

Q Are you familiar with Pearl Coker's production?

A Yes.

Q Did she, during the period she was under your supervision, regularly make her production?

A She was under make-up.

* * * *

[1025] Q Was there anyone else under your supervision who was doing the same work that Pearl Coker was doing, at the same time that Pearl Coker was doing it?

A Yes.

Q Who was that?

A Hester Lou McCart, Mary Lou Partain.

Q (By Trial Examiner) They were both setting collars, too?

A Yes.

Q (By Mr. Thompson) Did Hester Lou McCart make her production?

A Yes.

Q Did Mary Lou Partain regularly make her production?

A No.

Q She did not?

A She did not.

* * * *

Q Was Pearl Coker ever terminated from the Walton Manufac- [1026] turing Company?

A Yes.

Q Do you know who notified her that she was being terminated?

A Mr. "Murph".

Q What were the factors that entered into her termination?

A Well, most—Mr. "Murph" and I had discussed the section was a little bit too strong, there; who we was to lay off, and Pearl Coker was the lowest in production.

Q Were there any other factors which entered into the decision to lay off?

A She did poor work.
Q What do you mean by poor work?
A It wasn't satisfactory, at times.

* * * *

[1027] Q (By Mr. Thompson) And after Pearl Coker was laid off, who [1028] performed the work that she had previously done?
A Mary Lou Partain.
Q And is Mary Lou Partain still performing that work?
A No.
Q Who is performing it now?
A Pearl Coker and Louise Sammons.
Q When did Pearl Coker come back to work?
A The first part of October of this year.
Q And who performed the work between the time Pearl was laid off and the time that she came back to work?
A Hester Lou McCart, Mary Lou Partain, and Louise Sammons.
Q Now did those girls do any other work in addition to the work that Pearl had done?
A Yes.

* * * *

[1029] Q Mrs. Higgins, did you ever have an employee by the name of Frances Elizabeth Johnson employed under you?
A Yes.
Q What job did Frances Elizabeth Johnson do?
A She set the facing to the lining.

Q Is she the Frances Elizabeth Johnson who took Lucille Yancey's place?

A Yes.

Q (By Trial Examiner) Is that the same type of work that Lucille Yancey did?

A Yes.

Q (By Mr. Thompson) How does the work that Frances Elizabeth Johnson do, differ from the work that Lucille Yancey did; if it does differ?

A It didn't differ. It was the same.

* * * *

[1032] Q (By Mr. Thompson) Now at the time Frances Elizabeth Johnson was laid off, and from that time on, who did the work [1033] that she was doing at the time of her lay-off?

A Imogene Meeks and Odelle Barnes are doing that work now. They are still doing it.

Q Has anyone else done that work since the time Frances Elizabeth Johnson was laid off?

A Yes. Occasionally we would get behind, and maybe we would have someone to help maybe a half a day.

* * * *

Q Do you know the factors which concerned Frances Elizabeth Johnson and led to her lay-off?

A A cut-back in production.

TRIAL EXAMINER:

The question is do you know the factors?

THE WITNESS:
Yes.

TRIAL EXAMINER:
Just answer the question you are asked, [1034] Mrs. Higgins.

Q (By Mr. Thompson) What are those factors?

A She was slow in production, and poor quality; quantity.

• • • •

Q Did you ever have an employee under your supervision by the name of Evelyn Hudson?

A Yes.

Q What job did Evelyn Hudson do?

A She did the tacking of the sleeves.

Q Will you explain what that operation is?

[1035] A Yes. It's tacking the sleeve lining to the coat on this seam, and on this seam—

Q The outside seam, to hold the lining in place.

A Yes.

Q Was there anyone else who was doing this work at the same time Evelyn Hudson was doing it?

A No.

Q Now was Evelyn Hudson ever laid off or discharged?

A Yes.

Q When did that take place?

A In January.

Q Do you know what part of January?

A The latter part of January.

• • • •

[1036] Q Do you want to ask your question now? What were the factors that made you decide to lay off Evelyn Hudson, rather than some other girl?

A Because that the two girls that did the work before Evelyn, took up the same operation that Evelyn did, which they are still doing today.

Q What two girls are those?

A Grace Barnes and Bonnie Thompson.

Q (By Mr. Thompson) Now at the time Grace Barnes and Bonnie Thompson took over the work that Evelyn Hudson had been doing prior to her lay-off, who took over the work that Grace Barnes and Bonnie Thompson had been doing?

A No one.

Q Who did that work then?

A They did it themselves.

Q Who is doing that work now?

A Grace Barnes and Bonnie Thompson.

[1037] Q Has anyone else done that work since the time Evelyn Hudson was laid off, other than those two people?

A No.

Q Did Evelyn Hudson perform any other operation while she was under your supervision?

A Yes.

Q What else did she do?

A She helped in the making of the sleeves, when she would catch up on her job.

Q And who was regularly performing the operation that she helped in?

A Regina Hall.

TRIAL EXAMINER:

What's that? Making of the sleeves?

THE WITNESS:

Making of the sleeves,—sleeve linings. And also Mary Barnes was making sleeves.

Q (By Trial Examiner) Do I understand you correctly that in addition to tacking sleeves, Evelyn Hudson, while she was working in your plant, also helped make sleeves and sleeve linings?

A Yes.

Q And that in addition to Evelyn Hudson doing that work, it was done by some other girls?

A Yes.

Q Who were the other girls?

A Mary Barnes and Regina Hall.

[1038] TRIAL EXAMINER:

You may continue.

Q (By Mr. Thompson) Are you familiar with whether or not Evelyn Hudson made production during the time she worked under your supervision?

A She did.

Q She did make production?

A Yes.

* * * *

[1040] Q Mrs. Higgins, do you recall whether or not Evelyn Hudson ever came back to work under your supervision?

A She did.

Q Do you recall when she came back to work?

A She came back the later part of June or first of July of [1041] this year.

Q That's 1958.

A Yes.

Q And what operation was she put on when she came back to work?

A Making the sleeve and sleeve lining.

Q Is that any different than the operation she was doing before she left?

A That was the same operation that she was helping to do when she left.

* * * *

[1046] CROSS-EXAMINATION

Q (By Mr. Joy)

* * * *

Q You stated that Lucille Yancey did very bad work, and that work was returned by others, and you found some yourself. Isn't it a fact that that was a very small percentage of the total amount of her production that was found bad?

A Her work had to be corrected before it left the section.

Q Now to get back to the question: Isn't it a fact that the work that had to be—that was found defective, which you just volunteered had to be corrected, isn't it a fact that the amount of that work was very small, compared to the total production?

A No.

Q What percentage of it—of the work was bad?

A Nearly all of it.

Q Nearly all of her work was bad and had to be done over again?

A Yes.

Q Who did it over again?

A She did; herself.

Q I understood you to say that the operation which followed Lucille's was done by the pocket setters; is that correct?

[1047] A Yes.

Q If she had to do all of her work over again, what did they do to kill time?

A I didn't say that she did all of it.

Q You said all of it was bad, and she had to do it over.

A No. I said nearly.

Q Well, nearly all of it. What did the pocket setters do to occupy their time?

A They just had to wait for it to be repaired.

Q You mean that for a period of some six months you allowed the pocket setters to sit there practically all day with no work to do because somebody was doing bad work?

A No.

Q What period of time would that cover?

A It didn't take very long to repair the work.

Q Didn't it take as long to repair it as it did to do it originally?

A Yes.

* * * *

[1050] Q Now, again, I ask is it not true that she made production without make-up as many times or as many weeks, or more weeks, than she did not make production?

A I don't know for sure.

Q And isn't it a fact, also, that in most of the weeks when she had make-up, that the amount was very small?

A Yes.

Q (By Trial Examiner) In view of that fact do you say that one of the reasons that Lucille Yancey was discharged was because she couldn't make her production?

A She did very bad work; was the main reason she left.

* * * *

[1057] Q In considering factors to lay off, or discharge a worker, did you consider whether an operator could do more than one operation?

[1058] A Yes.

* * * *

Q In the case of Evelyn Hudson, did she not perform more than one operation?

A Yes.

* * * *

[1070] RECROSS EXAMINATION

Q (By Mr. Sheinkman) ...

* * * *

[1071] Q Now did anything special happen on the day, or the day before Lucille Yancey was fired, with regard to the work of Lucille Yancey? Was her work on that day any better or any worse than it had been right along?

A It was about the same.

Q Did anything of any unusual nature occur that day, or the day before, or that week?

A I don't recall anything.

* * * *

[1072] Q And did you ask Mr. "Murph" to discharge her?

A I didn't, the day that he did.

[1073] Q Did you ask him to discharge her three weeks before that?

A I didn't ask him to discharge her, but I talked to him about the way she was and I had gone about as far as I could go with her.

Q Did you ask him at any time to discharge her?

A No.

Q Do you have any knowledge as to why he discharged the girl on the particular day that he did?

A No; I don't.

* * * *

[1075] JERRY CARTER

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

State your name and address to the reporter.

THE WITNESS:

Jerry Carter, Loganville, Georgia.

DIRECT EXAMINATION

Q (By Mr. Thompson) Mr. Carter, are you employed by the Walton Manufacturing Company?

A Yes, sir.

Q What is your job?

[1076] A Supervisor.

* * * *

Q Mr. Carter, in the course of your employment at Walton Manufacturing Company, have you ever had an employee under your supervision by the name of Bonnie Hamilton?

A Yes; I have.

* * * *

[1077] Q Mr. Carter, at the time Bonnie Hamilton was performing this operation, was anybody else performing it?

A Yes, sir.

Q Who was the other person?

A Lucille Yancey.

Q Now is that the Lucille Yancey who was discharged or laid off?

A No, sir.

Q Or is it the Lucille Yancey who has worked there continuously?

A That's correct. Lucille Yancey is working now.

Q Is this Lucille Yancey you are referring to—has she ever been laid off or discharged; so far as you know?

A No, sir.

Q Was Bonnie Hamilton ever terminated, laid off, discharged?

[1078] A Yes, sir.

Q Do you know when that took place?

A It was the 31st of January.

* * * *

Q Do you know what the factors were that were taken into consideration in arriving at the decision to lay off this lady?

A Yes, sir.

Q What were those factors?

A We just didn't have enough work for both the girls to do.

Q Who are the "both the girls" you are referring to?

A Lucille Yancey and Bonnie Hamilton. And we had to cut down on our personnel.

Q What are the factors, if any, which led you to the decision to lay off Bonnie Hamilton and retain Lucille Yancey?

A Well, we felt that Lucille's quality was a little better.

Q Were there any other factors involved?

A No.

* * * *

[1079] Q During the course of your employment, has a person by the name of Violet Ewing ever been employed under your supervision?

A Yes, sir.

* * * *

[1080] Q Was Violet Ewing ever laid off or discharged?

A Yes, sir.

Q Which was it?

A She was laid off.

Q Do you know when she was laid off?

A 31st of January.

* * * *

[1081] Q Now were there any factors which were taken into consideration in determining whether Violet Ewing or Margaret Britt would be retained?

A Yes, sir.

Q What were those factors?

A The factors were that we felt making the flaps was a more intricate operation, and it would take longer to train a girl for that job than it would be training them on welts. So we had Margaret make all the welts. She took over her work.

* * * *

[1082] Q Have you ever had an employee by the name of Nellie Hood under your supervision?

[1083] A Yes, sir; I did.

Q What job did Nellie Hood do?

A She did floor work.

* * * *

Q Was Nellie Hood ever discharged or laid off while she was under your supervision?

A Yes, sir.

Q Which was it; lay-off or discharge?

A Laid off.

Q When was she laid off?

A 31st of January.

Q What year?

[1084] A '58.

Q Are you familiar with the factors which were taken

into consideration in determining whether she should be laid off, or not?

A Yes, sir; I am.

Q What are those factors?

A We just had to cut down on our personnel, to handle the amount of work we had to do.

Q What are the factors that led to the decision that Nellie Hood should be laid off in preference to some other person that might have been under your supervision?

A Well, it just wasn't any more work for her—I had the work myself that she had been doing. There wasn't enough work for her.

* * * *

[1096] Q (By Mr. Thompson) Do you recall ever having a conversation with Nellie Hood concerning the union?

A No, sir; not a conversation.

Q Did you ever speak the word union to Nellie Hood?

A I recall asking her what she knew about the union.

Q What did she say?

* * * *

[1097] Q Did you ever say anything else to her about that, with reference to that conversation?

A No; not that I—I believe I remember after having seen her name on the bulletin board, I remember going up to her and telling her that she told me a story.

* * * *

[1098] CROSS EXAMINATION

Q (By Mr. Joy) . . .

* * * *

[1099] Q Was Violet Ewing making production before she was laid off?

A As well as I can remember, she was making around—she may have had some make-up. I just don't remember. I am not too familiar with the make-up on them.

Q I didn't catch that last.

A I said I am not too familiar with the make-up on them.

Q Do you know which one had the most make-up?

A I believe that Margaret had the most make-up. Now I am saying I am not too familiar with the make-up.

* * * *

[1103] Q In other words—and how about Nellie Hood? Did you first mention her to be laid off, or did Mr. "Murph" suggest it?

A I think it was Mr. "Murph," because Nellie was a little—because she was doing work—it was just floor work that she did, and I think it was "Murph" suggested it.

* * * *

[1109] EDNA ATHA

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

Give your name and address to the reporter.

THE WITNESS:

Edna Atha, Route 3, Loganville, Georgia.

DIRECT EXAMINATION

Q (By Mr. Thompson) Mrs. Atha, were you ever employed by the Loganville Pants Company?

A Yes.

* * * *

[1110] Q (By Mr. Thompson) What job did you perform while you were so employed?

A Supervisor.

* * * *

[1114] Q Mrs. Atha, do you recall an employee by the name of Ruth Brooks?

A Yes.

Q What did Ruth Brooks do at the Loganville Pants Company?

A Well, she cut back pockets some, and she made welts on back pockets.

Q Do you know whether or not Ruth Brooks was ever discharged or laid off from the Loganville Pants Company?

[1115] A Yes.

Q Who actually discharged her, or laid her off?

A Mr. Hughley.

Q Which was it; was she discharged or laid off?

A Well, Mr. Hughley replied to me that he would have to let Ruth Brooks go. So I don't know if she was discharged or laid off. I don't know.

Q Were you present at the time she was discharged?

A No.

Q Do you recall ever asking Ruth Brooks if the union people had been to see her?

A Yes.

Q What was her reply?

A She said, "Yes. I suppose they have been around to see everybody around here."

Q Was there anything else said about it?

A No.

Q Did you ever ask Nancy Williams whether the union people had been to see her?

A Yes.

Q What was her reply?

A "Yes."

Q Anything else said between you?

A No.

Q Now did you ask anybody else at the plant that same ques- [1116] tion?

A Well, I probably asked a few girls.

* * * *

[1119] Q Now was Lela Beaver one of the people who went to Walton Manufacturing Company, or was she one of the people who was not kept?

A She was one of the people not kept.

Q Do you know the factors which were taken into consideration in deciding that Lela Beaver would not be kept?

A Well, we had to give a girl—let a girl do a couple of operations, and the reason we didn't keep Lela Beaver, we had to give her the job—the girl we replaced her with had to set flys and tack belt loops. She had two jobs.

* * * *

[1120] Q Do you recall ever asking Pauline Spratlin why anyone was [interested in the union] at the Loganville plant?

A Yes.

Q What were the circumstances that caused you to ask her that?

A Well, a girl from the other shop came—

Q Who was the other girl?

A Nellie Wood.

Q Did you know Nellie Wood at the time?

A Yes.

Q Tell us what happened.

A She came up and was talking to the girls, talking to some of the girls, and was—she was talking to Pauline, and I [1121] asked Pauline what Nellie Wood wanted.

Q What did Pauline say?

A She said, "She wants me to sign a union card."

* * * *

CROSS-EXAMINATION

Q (By Mr. Joy)

* * * *

[1124] Q Now after Ruth Brooks was terminated, was there anyone hired to take her place?

A Yes.

Q Who was that?

A Virginia Moon.

* * * *

[1126] Q (By Mr. Joy) Was Ruth Brooks able to perform all four of those operations?

[1127] A I beg your pardon.

Q Was Ruth Brooks able to perform all four of those operations?

A Was she able to perform all those operations?

Q Yes. Was she qualified to do all those four different pocket operations?

A Yes.

* * * *

[1145] I. S. PROSTERMAN

recalled as a witness on behalf of the Respondents, having been previously duly sworn, was examined and testified further as follows:

* * * *

[1146] DIRECT EXAMINATION

* * * *

[1147] Q (By Mr. Thompson) Mr. Prosterman, do you recall the date that this Lucille Yancey was terminated from her employment at Walton?

A It was early December. I don't know exactly.

Q What year?

A 1957.

Q Who notified her of her termination?

A I did.

Q Was she laid off or discharged, or otherwise, at that time?

A She was discharged.

Q What were the factors which led to her discharge?

A The main factor leading to her discharge was the fact that [1148] she was unable to produce work of an acceptable quality.

Q Exactly what do you mean by her being unable to produce work of an acceptable quality?

* * * *

[1149] Q What was the reason for her being discharged, at the time she was discharged? Was there any particular thing that came about on that day she was discharged?

A Nothing any other than what I have told you. The culmination of these factors to that particular point.

* * * *

[1154] Q (By Mr. Thompson) The question is, in reaching your determination on these lay-offs, your decision as to who would be laid off, I want you to tell us what part make-up played in the decision. In other words, where did the make-up figure in?

A Well, in my last explanation I attempted to put this on the basis of quantity of production, rather than amount of make-up. They are synonymous; one and the same; one being the result of the other. Make-up, as such, is a barometer to the production-ability of an operator; played a part, became a factor, when—in a choice between one operator and another, or between one operator and a group of others, on an identical operation; or where the skill was very similar, one operator showed up with less make-up than the

other. And that is the only time make-up was an important factor in arriving at [1155] my decision.

* * * *

[1178] Q (By Mr. Thompson) Mr. Prosterman, do you recall an employee by the name of Grace McCart?

A Yes, sir; I do.

Q Was Grace McCart terminated, her employment, at any time?

A That's right. January 10th.

Q (By Trial Examiner) Was she terminated, or discharged?

A Grace McCart was fired.

Q (By Mr. Thompson) What were the factors which led to her discharge?

A Grace McCart had had a history of continual bad quality, and a large amount of repairs were required, and approximately January 10th we decided that rather than accept this bad work, that is, a continuation of it, we determined to discharge her and try somebody else on her job.

* * * *

[1186] Q Do you recall an employee by the name of Pauline McGee?

A Yes, sir.

Q What did Pauline McGee do?

A She did the operation known as basteing the bottom hem.

Q Who else, if anybody, did that same operation while Pauline McGee was doing it?

A No one.

Q Was Pauline McGee ever laid off or discharged?

A She was laid off on January 31st.

Q And what were the factors which were taken into consideration and led to her lay-off?

A Charlotte Finley did a similar operation, using the same machine, and applying similar skill. Charlotte Finley had also done Pauline McGee's work. In determining which operator I believed to be the most competent, able to carry on both operations, I found that Charlotte Finley had progressed more rapidly than Pauline McGee. I therefore, since similar skills were employed, and one operator was able to take care of the job, I chose Charlotte Finley over Pauline McGee.

* * * *

[1187] Q Who did the work of Pauline McGee after she was laid off?

A Charlotte Finley.

Q And has anyone been employed to perform the operation which Pauline McGee did since her lay-off?

A No one was employed.

Q Has anyone else performed this operation other than Charlotte Finley?

A Yes.

Q Who?

A Geneva Harris.

Q What were the circumstances there?

A At the outset, when Pauline McGee was laid off, a certain amount of training was required to bring Charlotte Finley up to production. At that particular time she got behind on her job and Geneva Harris, who also had helped

out on this particular operation, bottom hem basteing, assisted for a short while.

* * * *

[1189] Q (By Mr. Thompson) Did you take into consideration, in arriving at the decision to lay off Pauline McGee, the operation of any of the other jobs other than the one that you have mentioned here?

A No, sir.

* * * *

[1190] Q (By Mr. Thompson) Was Violet Ewing ever laid off or discharged?

A She was laid off.

Q What date?

A On January 31st.

Q Now I will go back to my question. What are the factors which led to the decision to lay off Violet Ewing?

A The main consideration here was given to the quality work [1191] required for the making of flaps, which was Margaret Britt's work. This is an operation which requires a higher degree of skill, much greater degree of skill, than the making of the welts.

* * * *

[1198] Q What became of the sewing of the pocket facings?

A This job was turned over to an operator—to another [1199] operator. Madeline—

Q (By Trial Examiner) Which?

A The lower pocket facing.

Q (By Mr. Thompson) Sewing of lower pocket facings. What became of it? It was turned over to who?

A Madeline — I can't remember her last name.

Q Do you remember Madeline's last name?

A No, sir; I can't. I am sorry.

Q What was Madeline doing prior to the time of the lay-off?

A Madeline was working in the collar section. Various operations. Small operations. A variety of small operations.

• • • •

[1201] Q Mr. Prosterman, in arriving at your decision to lay off Violet Ewing, did you take into consideration the operations of any other employees other than Violet Ewing and Margaret Britt?

[1202] A No, sir.

• • • •

[1205] Q Was Ida Harper ever laid off or discharged?

A She was laid off on January 31st.

Q What were the factors which were taken into consideration and led to her lay-off?

A On this particular type of an operation, there was not [1206] sufficient work at that time to employ two operators. The other operation, which was similar to this, done on a similar machine, was known as bottom felling.

Q And who was doing that?

A Geneva Harris. In determining which operator should be retained and which one laid off, I found that because of the fact that Geneva Harris was a better operator, more

reliable, I felt that she would be more valuable to the company than Ida Harper.

* * * *

Q (By Mr. Thompson) What did Ida Harper do that led you to this conclusion?

A Ida Harper was a person who I personally would term immature, —

Q What do you mean by that?

A (Continuing) — and would not tend to her job properly, like an operator should. She wouldn't stay on the job. She would [1207] laugh and talk and cause a disturbance in the factory. And —

Q This laughing and talking, did it take place during lunch hours, and working hours, or both —

A No. I am speaking of during working hours.

Q Go ahead, sir.

A And she also had a bad make-up record. She would not take kindly to any requests from the supervisor for increasing her production —

Q (By Trial Examiner) What do you mean by didn't take kindly to it? I didn't understand that term. I have heard a lot of it but I still haven't had anyone explain it to me.

A Well, her supervisor would ask her to try to do better, so far as production was concerned, and we got no results.

Q Is that what you mean by didn't take kindly to it?

A Sir, I will be quite frank with you. I cannot explain it, exactly.

Q Is this the explanation you are making of that term?

A I cannot explain it any differently.

Q After being cautioned about not making enough production, she didn't make any more production?

A Well, as I said before, Ida Harper displayed an immature attitude.

Q Was she fresh to the supervisor when she was criticized?

A No, but she made light of the situation. Now not being present there, I cannot tell you exactly, but as it was reported [1208] to me, very, very often, and by many discussions that were had.

Q (By Mr. Thompson) Who reported this to you?

A Mrs. Ewing; Myrtle Ewing.

Q Was she the supervisor involved?

A That's right.

* * * *

[1215] Q Now at the time of the lay-off, what became of the work that wa sbeing done by Frances Elizabeth Johnson?

A We combined that work with the work of the pocket makers.

Q That would be who?

A Imogene Meeks and Odelle Barnes.

Q Was anybody else in that section laid off in addition to [1216] Frances Elizabeth Johnson?

A That particular section, no.

Q What were the factors which led to your decision to lay off Frances Elizabeth Johnson?

A Well, it was necessary for me to leave myself with the best operators, and pick the least competent operator for the lay-off, and Elizabeth Johnson was the least competent of all the operators in that section.

Q What do you mean when you say that she was the least competent?

A Well, she was the least able to produce quality work.

Q (By Trial Examiner) Do you mean that the work she performed was not the proper quality?

A Well it was —

Q Or that you did not give her more difficult work to perform?

A No; we did not give her more difficult work to perform, because this was work that we had put her on, and she was actually training on this job, but by the observation of her sewing, it was easily seen that she could not perform any of the other jobs as well as any of the operators could perform her job.

Q (By Mr. Thompson) Were there any other factors which entered into the lay-off of Frances Elizabeth Johnson?

A No.

* * * *

[1222] Q Was Evelyn Hudson ever laid off or discharged?

A She was laid off on January 31st.

Q And what were the factors which led to the decision to [1223] lay her off?

A It was necessary to reduce my force in that section, sleeve section. I felt that Evelyn Hudson's operation was the most mechanical operation in that section, and could be more easily absorbed by the remaining operators, than any other operation within that section.

I felt, also, that the other operators within that section

could absorb her operation more easily than she could absorb their operation.

Therefore, with the — and keeping in view the fact that I had to keep my re-training costs to a minimum. That led to the decision to lay off Evelyn Hudson.

Q Now after Evelyn Hudson was laid off, who did the work that she had done, prior to the time she was laid off?

A That was divided — originally was divided between two operators; Bonnie Thompson and Grace Barnes.

Q What part of it did Bonnie Thompson do?

A The same work that Evelyn Hudson had done.

* * * *

[1227] A Had Evelyn ever made sleeves before? At the time of rehiring?

Q No; at the time she was laid off.

A To my knowledge the only job Evelyn Hudson ever had done was the sleeve lining tacking. That job.

Q Was her work satisfactory?

A Her work was satisfactory; yes, sir.

* * * *

[1265] CROSS EXAMINATION

* * * *

[1274] Q (By Mr. Sheinkman) ...

* * * *

[1275] Q When did you contemplate cutting back your production?

A We contemplated it during the month of December.

Q When did you contemplate reducing from 400 to 300 per day production?

A That was at that time. That's what we were talking about.

Q Was it usual for you to prepare for a lay-off two months in advance?

A Well, I had never been faced with this thing, so I can't tell you what's usual.

* * * *

[1280] Q What date was that?

A Approximately the 13th, 14th, 15th of January.

Q Were you told how many employees to lay off?

A I was not told how many employees to lay off.

Q Were you ever told how many employees to lay off?

A No, sir.

Q Nobody ever told you how many to lay off.

A No, sir.

Q You decided the number that would be laid off?

A That's right.

Q Now did you testify on direct examination that Mary Lou Partain was a utility operator prior to January 31, 1958?

A Yes, sir; I did.

Q Did you consider her a good worker, a poor worker, or an average worker?

A Poor, from one standpoint. Good, from another.

Q What was she poor for?

A Poor production on most operations. She was a slow operator, but she was a very clean and neat operator.

Q Did you let Mary Lou Partain go?

A No.

Q I show you General Counsel's Exhibit 19 which says — I ask [1281] you to read it, about the name of Mary Lou Partain. I ask you, after reading that, why you let her go.

A I changed my mind.

Q After consulting with Morris.

A Well, this particular list wasn't binding on Morris. Morris's discussions with me weren't binding on me.

MR. SHEINKMAN:

Mr. Examiner, I would like you to request the witness to answer the question.

TRIAL EXAMINER:

He is answering the question.

Q (By Mr. Sheinkman) Did you not state on General Counsel's Exhibit 19 that Mary Lou Partain, and I quote, "Must be replaced"?

A I stated that.

Q And yet you did not replace her; is that right?

A That's right.

TRIAL EXAMINER:

I have a question.

Q (By Trial Examiner) Mr. Prosterman, how long had you been having trouble with Grace McCart?

A From the first day I came to the plant.

Q When you were preparing this list of people to be laid off because of the cut-back, how come you didn't put Grace McCart's name on the list?

A Well, Grace McCart works on the Lewis felling machine. I had nobody available in the factory trained on this

operation. Lewis felling machine operators are not easily trained.

* * * *

[1284] Q (By Mr. Sheinkman) Did you lay off or discharge Frances Johnson?

A Frances Johnson was laid off.

Q At the time she was laid off, prior to the time she was laid off, did you have any complaints about her from her supervisors?

A Not too many.

Q Did you have many?

A Not many; no.

Q Did you have some?

A Some.

Q Did you speak to her about the quality of her work?

A Did I speak to her — to whom; the supervisor?

Q Frances Johnson.

[1285] A I believe I did.

Q You told her about the quality of the work?

A Yes.

Q You told her if she didn't improve she would be laid off?

A No, sir; I did not.

Q What did you tell her?

A I complimented her. I told her she was progressing nicely.

Q When did you do this?

A I don't remember, exactly.

Q Was it in December or January?

A I don't remember exactly. But I know at times I would go by her machine and encourage her.

Q Did you consider her a good or a poor operator?
A I considered her a poor operator.
Q You encouraged her because she was progressing.
A Yes, sir.
Q In fact she got some increases, didn't she?
A She got an increase when she went onto a new job.
Q Five cents an hour.
A Five cents an hour.
Q She started at a dollar an hour, didn't she?
A I believe that's right. I wasn't here when she started.
Q When she was laid off she was receiving a $1.15.
A I think that's right.
[1286] Q Did you ever tell Pearl Coker that her work was unsatisfactory?
A I, personally?
Q Yes, sir.
A Pertaining to quality, sir?

TRIAL EXAMINER:
Did you ever tell her her work was unsatisfactory in any respect?

THE WITNESS:
I do not remember telling her that her work was unsatisfactory, pertaining to quality. I do remember telling her as to production.

TRIAL EXAMINER:
Nobody asked you anything about quality. Don't fence with Mr. Sheinkman.

THE WITNESS.
I don't mean to fence, sir.

TRIAL EXAMINER:

Just answer his questions. He asked you if you ever told Pearl Coker — repeat the question.

THE WITNESS:

Did I talk to her about her work.

TRIAL EXAMINER:

Yes.

MR. SHEINKMAN:

Yes.

A Yes, sir.

Q (By Mr. Sheinkman) Was she laid off because her work was insufficient?

A Insufficient production.

* * * *

[1289] Q I believe you stated on direct examination by the General Counsel, it was close as to whether Pauline McGee would be laid off or would not be laid off; is that correct?

A That's right.

Q Did you have any complaints about her work?

A No.

Q Did you ever speak to her about her work?

A Oh, yes.

Q Compliment her, or reprimand her?

A Just merely I encouraged her.

Q Is it not a fact that Violet Ewing was re-hired as a [1290] utility operator?

A Yes; re-hired as a utility operator.

Q And in order to be a utility operator it requires more skill than to just be an ordinary operator.

A It depends on the status of utility operator. In this particular case, if you want that clarified I will do so.

Q Well, let me ask you just generally. Does a utility operator have to perform more than one operation?

A Yes; a utility operator must perform more than one operation.

Q Is a utility operator more versatile?

A That's why we make them utility operators, usually.

Q Wasn't versatility a factor which you considered before you laid off the employees on January 31, 1958?

A Yes it was, in some cases.

Q And yet when you re-hired Violet Ewing, you put her right to work as a utility operator; is that right?

A We put her to work on the utility operator; yes.

* * * *

[1291] Q When you decided to lay off the employees on January 31, 1958 you considered different factors in each case; is that right? You used no standard factor; is that right?

[1292] A That is true.

Q In other words, in some cases you would consider production a factor?

A In some cases I would consider production a factor.

Q In some cases you would consider versatility a factor?

A Yes.

Q Did you ever consider versatility as a factor in comparing a girl to be laid off with other operators in the whole plant?

A No.

Q When you hired a replacement, which you stated was hired from the existing work force, did you consider versatility throughout the plant as a factor before hiring a girl for that new — for that replaced job?

A Well, let me answer it this way: In all cases when I required a girl on the job, I considered the people within the plant first. I don't —

Q On a plant-wide basis, or on a section basis?

A I considered this on a plant-wide basis.

Q And yet in the case of lay-offs you considered it on a section basis.

A Well, —

Q Now just answer my question.

TRIAL EXAMINER:

Answer his question.

Q (By Mr. Sheinkman) Answer Yes or No.

[1293] A Yes.

Q Isn't it a fact, Mr. Prosterman, based on your experience for years, when it comes to sewing, it is easier to train somebody for a new job who has had experience working in a clothing factory, rather than hiring a new employee?

A Not necessarily.

Q But yet you considered this factor in attempting to retrain old girls for replaced jobs; is that right?

A Yes.

Q Now in hiring new employees subsequent to January 31, 1958, did you call in any of the girls that had been laid off on that date, to try out for any new selling job?

A I believe I re-hired a few.

Q Approximately do you remember re-hiring?

A I would like to ask you a question. Are you referring

now to those girls laid off on January 31st? Did I understand your question correctly?

Q Yes. I am referring to the girls laid off on January 31st.

THE WITNESS:

Mr. Examiner, my memory fails me. If I would be allowed to—

Q (By Mr. Sheinkman) Was Pearl Coker re-hired?

A Pearl Coker; yes.

Q Was Violet Ewing re-hired?

A Yes.

[1294] Q Was Pauline McGee re-nired?

A No.

Q Why wasn't she re-hired?

A I didn't feel that her skills were applicable to any of the jobs that I had.

Q Isn't it a fact that all the new employees you hired had never worked in clothing factories before?

A Yes.

Q Never made coats before.

A That is correct.

Q And yet Pauline McGee had worked on coats before; hadn't she?

A Yes; she had.

Q And yet you felt that the new employee's skill could better be applied than Pauline McGee's; is that right?

A Yes.

Q How about Bonnie Hamilton? Did you recall her?

A No; I didn't.

Q And yet she was laid off, is that right?

A That's right.

Q And yet you called and hired new employees; is that right?

A That is right.

TRIAL EXAMINER:

Don't let's get that same question with respect to each name. We have already in the record he re-hired — he hired new employees who never worked in the coat [1295] factory, and he don't have to repeat it after each name you discuss with him.

Q (By Mr. Sheinkman) With respect to Pauline McGee, then, didn't you testify it wasn't the quality of her work that caused her lay-off?

A That is correct.

Q She was a good worker?

A She was a good worker.

Q And yet you didn't recall her and give her another opportunity; is that right?

A That is right.

Q You had never seen any of the other girls whom you hired subsequent to January 31, 1958 work in a clothing plant before, had you?

A That's right.

Q And you followed this same procedure with respect to the other girls relative to Pearl Coker and Violet Ewing; is that right? You never did recall those other girls who were laid off.

A That's right.

Q Am I to understand correctly that Pearl Coker, before her discharge, performed unsatisfactory work?

A Before —

Q Before her discharge, did she not perform unsatisfactory work?

[1296] A How long before her discharge?

MR. SHEINKMAN:

Your Honor, I submit the witness is fencing with me at this time.

TRIAL EXAMINER:

Answer the question the best way you know how.

THE WITNESS:

Sorry.

A Will you please repeat the question?

TRIAL EXAMINER:

Before her discharge, did Pearl Coker do unsatisfactory work? If you want to qualify your answer, you may qualify your answer.

THE WITNESS:

Yes; I would like to qualify my answer.

A Immediately before her discharge she was not doing unsatisfactory work. However, previous to that particular time, I would say about two months before, her work was not very good.

Q (By Mr. Sheinkman) Her work was not very good.

A Not very good. Her quality had improved.

Q Did I understand her quality improved before her discharge?

A That's right.

Q And yet you discharged her?

A That's right.
Q You didn't lay her off.
A That's right.
Q You had no intention of recalling her.
A That's correct.

* * * *

[1297] Q Who had a better record before her lay-off; Violet Ewing or Margaret Britt?
A Violet Ewing had a better record.

* * * *

[1310] RECROSS EXAMINATION

* * * *

[1320] Q (By Trial Examiner) Mr. Prosterman, when did you first learn that the union was attempting to recruit the employees of Walton Manufacturing Company?
A I think it was some time during the month of November.
Q November?
A Yes.
[1321] Q Was it early November?
A I think it was. I am not quite certain about that. I believe it was.
Q Now at the time you first discovered that, did you have any conversations with any of the Scharffs relative to

the fact that the Union was attempting to organize the plant?

A Oh, yes.

* * * *

[1326] Q Now you also had bad quality from Grace McCart; isn't that correct?

A That is correct.

Q And you have been having that bad quality for a long time.

A Ever since I was there.

Q And when Morris Scharff told you to prepare a list for lay-offs, how was it that you did not consider Grace McCart for lay-off?

A I can explain that very well. The Lewis felling machine operator is a tough operator to train. It's a rough machine to learn. And I had no replacements to put on that job. That is why I did not recommend the lay-off of Grace McCart.

Furthermore I felt that —

Q Did you have a replacement on January 10th?

A What did you say?

Q Did you have a replacement on January 10th?

A No; I didn't have a replacement exactly. I had another girl available who had operated that machine. So I thought that I would try her out to see how she would do on that particular operation.

* * * *

[1329] Q Now in connection with Nellie Wood, she was a versatile operator, wasn't she?

A I would say she was a fairly versatile operator.

Q She was doing the same kind of work you had two other operators on.

A That is right.

Q She could do either operation?

A She could do two operations.

Q And there was nothing wrong with her work; is that correct?

A No; there was really nothing wrong with her work. She could not do the same — could not perform either operation with the same quality or production-ability of either of the other girls, but that was understandable because she was —

Q If you put her on one job, she might have done as well —

A She might have done as well as either one of the other operators.

* * * *

[1350] TRIAL EXAMINER:

Are you then amending your Answer in respect of paragraph 2 of the Complaint?

MR. THOMPSON:

Mr. Examiner, we are not in a position to say that they are a single employer. They were separate employers. However, the operations were so inter-related and closely related that we are not making any contention that the one should be severed from the other and tried separately, or anything along that line. I am attempting to remove that issue from the case.

[1351] TRIAL EXAMINER:

I am trying to explore that. The allegation says for the purpose of this proceeding they were a single employer. Now it doesn't go beyond the purpose of this proceeding, as alleged in the Complaint, and that's the reason I directed your attention to the allegation, with the view that possibly you may wish to — in view of the fact you are indicating you are attempting to remove that as an issue of the case, the best way to remove an issue from the case is to admit it by pleading. If it stands denied in any part, a finding would be required, based on the allegation and the partial denial.

MR. THOMPSON:

Mr. Examiner, if I may clarify my position: We would be willing to admit that from the period in September in 1957 until January the 31st, 1958, these two employers were so closely inter-related, and the operations were so closely inter-related, so as to consider them as one for the purposes of this proceeding, and under the interpretations of the National Labor Relations Act.

* * * *

[1357] Now, Mr. Examiner, I have one other matter which, likewise, is designed toward eliminating an issue, and that is the status of Morris Scharff. I think the evidence is rather clear that Morris Scharff was present a good portion of the time — at least since November of 1957 — at the Walton Manufacturing Company, and that he was performing certain functions there, although it is not all the way clear what functions he was performing.

For the purpose of this proceeding — and only for the purpose of this proceeding — we are willing to admit that Morris [1358] Scharff, during the period in question here, acted in behalf of the Walton Manufacturing Company, within the meaning of the National Labor Relations Act.

TRIAL EXAMINER:

And was an agent of the company under Section 2.13 of the Act?

MR. THOMPSON:

As that Section has been interpreted to include, which it is my understanding goes beyond the normal interpretation of the word "agent" as it is normally interpreted in legal circles. As it is interpreted under the decisions of the Board and the courts. We are willing to stipulate that whatever Morris Scharff might have done that would be relevant to the issues of this case, he was acting in behalf of this corporation, and under those interpretations would be considered an agent.

* * * *

[1359] MORRIS SHARFF

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

Give your full name and address to the reporter.

THE WITNESS:

Morris Sharff: 3322 Roxboro Road, N.E., Atlanta, Georgia.

DIRECT EXAMINATION

Q (By Mr. Thompson)

* * * *

[1373] Q Have you seen General Counsel's Exhibit 5? Do you know which exhibit that is? I will hand you a document which has been received in evidence as General Counsel's Exhibit No. 5.

A Yes, sir.

Q Have you ever seen that before?

A Yes, sir.

Q Did that come in along about that time?

A It stated January 18th.

Q Do you recall receiving that document?

A Yes, sir.

Q And what did you do, if anything, when you received that document?

A I took it around to each one of the girls whose name was on the document, and I asked them whether or not their name belonged on that document; whether or not they authorized [1374] their name to be used.

Q What else did you do with it, if anything?

A Those that said Yes; I put a check mark there; and then I posted it on the bulletin board.

* * * *

[1376] Q And when did you interrogate the girls whose names are on that list — or who are mentioned in that letter with respect to whether they had authorized the use of their names?

A Either the same day or the following day. Probably the 20th.

* * * *

Q Now let's talk about the Union for a minute. When did you first find out the Union was trying to organize the Walton plant? If you ever found it out.

A In November.

Q November of what year?

A 1957.

Q About what part of November was that?

A I think it was right around the middle of November.

* * * *

[1377] Q Did you ever make any speeches to any employees about the union?

A Yes, sir.

Q Do you know when those speeches were made?

A I believe that those speeches were made the 3rd and the 6th of December. At any rate, the early part of December.

Q How many did you make?

A Two.

Q Did you make them at more than one of the plants?

A I made them at both of the plants.

Q And did you make different speeches at each plant, or did you make the same speech at each plant?

A Same speech.

* * * *

[1406] Q (By Mr. Thompson) Mr. Sharff, do you know when the supervisors were notified of the impending cut-back on January 31st?

A That was about either during the second week of January — I think it was during the second week of January.

Q Do you recall an employee by the name of Grace McCart?

A Yes, sir.

Q Do you know whether or not she was ever discharged?

A Yes, sir.

Q What were the circumstances of her discharge?

[1407] A The circumstances behind her discharge was that her work was bad — her work was unsatisfactory.

* * * *

Q Did she ever come to talk to you about her discharge?

A Yes, sir.

Q When did she come to see you?

A I believe the following day.

Q Where were you when she came to see you?

A In my office.

Q Was anybody else present?

A No, sir.

Q Tell us what took place, please, sir. What she said to you and what you said to her.

A Well, Grace came in to see me about her discharge, and she said that — she said that she felt that her discharge was [1408] due to the union, of being — to having signed the union card —

Q What did you say when she said that?

A I said it had nothing to do with her discharge. And then she said — she re-stated the fact, and then I asked her

if she had been to a union meeting, I believe the night before, a couple days before —

TRIAL EXAMINER:

You mean she repeated she thought she was being discharged because of union activity?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

Then you asked her —

THE WITNESS:

Then I asked her had she been to this union meeting.

Q (By Mr. Thompson) Why did you ask her if she had been to a union meeting?

A Well, I felt that being that she was so firm in the thought that she was discharged because of the union, or union membership, that it warranted talking about it to find out and to reassure her that it wasn't.

Q What else was said, if anything?

A I asked her who was there and she said — she didn't — she didn't either answer, or wouldn't say anything. She said she didn't know.

Q Was anything else said?

A And then I said, "Well, was Jeanette Beaver there, and Pearl Coker, Ruth Brooks?" and she didn't answer.

[1409] Q Was there anything else said?

A No.

Q (By Trial Examiner) What union meeting were you referring to?

A Well, there was a meeting a few days before that, I believe.

Q Did she say that she had been to the meeting?

A I believe so, sir.

TRIAL EXAMINER:

Go ahead.

Q (By Mr. Thompson) Why did you name off Ruth Brooks, Pearl Coker and Jeanette Beaver?

A Well, I named them just to see if she would admit that they were there, because it was common knowledge that — around the town that they were very heavily pro-union, and active in the organization attempt.

* * * *

[1438] Q Do you recall the job Lucille Yancey was doing?

A Yes, sir.

* * * *

Q Are you familiar with the circumstances which led to her discharge?

A I am.

[1439] Q Will you tell us briefly, sir, what those circumstances were?

A Well, it was a question of several things. Primarily, her work was completely unsatisfactory in so far as quality, as far as correctness of matching the proper facing to the proper lining. Lucille Yancey had a habit, as she got a bundle of —

* * * *

Q (By Mr. Thompson) Relate, Mr. Sharff, the things which entered into her discharge Relate all of them, but don't relate anything else.

A She had a habit of when she received a bundle that had mixed colors in it, that she would pull out the colors of lining of one color to sew them with the one color of thread, rather than to change thread. And then, of course, she could never get it back in the proper place, and this is what caused most of her work to become mixed up.

I know this personally, myself, because I personally reprimanded her on this, and told her about it many times. Because I knew she was having trouble.

* * * *

[1440] Her production, if I remember, was somewhat under her $40 minimum. I would say that she ran a make-up of two, three, four dollars a week for quite a few weeks running.

Not only was the unsatisfactory conduct of Lucille Yancey considered in her discharge at that time, because it had been going on for quite some time, but the productivity of the people throughout the shop, and taking it a step further — had taken it a step further, and Frances Elizabeth Johnson was no longer needed in her job. Her job could be absorbed by someone else. And that left us with the choice of either discharging Lucille Yancey on the basis of her bad work, or laying off Frances Elizabeth Johnson. Frances Elizabeth Johnson was a satisfactory employee on her job, and she was transferred over to Lucille Yancey's job simultaneously with the discharge of Lucille Yancey.

In addition to what I have said before, Grace Higgins, who was the floor lady, had come in to see me personally about ten days prior to the discharge of Lucille Yancey, and told me that she found it necessary that she would have to quit because Lucille Yancey was making her life miserable for her back there, and acting up, and on one occasion that I have seen myself, I saw Grace crying in the back, in her section.

All of those factors led to the discharge of Lucille Yancey on or about December 10th.

* * * *

[1444] Q Are you familiar with the circumstances under which Pearl Coker was discharged?

A Yes; I am.

Q Was she discharged?

A No — Yes; Pearl Coker was discharged.

Q What were the factors which led to her discharge?

A We had a situation there in the collar section where approximately 300 collars a day were needed, and Hester McCart, there, and Pearl Coker, there, both of them working, there still was an insufficient amount of collars being turned out, and it necessitated having a half of an operator in that section, thereby making two and a half operators.

Pearl Coker set a fair collar, and she was extremely slow. [1445] This is an operation that an operator would, in about six or seven, eight months on the job, should be making in the neighborhood of $48 to $52 a week. A good operator can make, on this job, about $60 to $65 a week, after a long period of training.

Pearl Coker had showed very little signs of increasing her production, and a girl who had been on a leave of absence, Louise Sammons, because there wasn't sufficient work at the time she left, was available, and was on a par with Hester McCart, and when she came back, she was able to come back, we knew that the two could carry the section with no make-up at all, and both make good livings, and do well.

Because of all of those reasons, it was found desirable to replace Pearl Coker at that time, and take advantage of the opportunity of getting Louise Sammons back when she was available.

* * * *

[1448] Q In so far as your records are concerned, what does the [1449] make-up column consist of?

A Make-up is the difference between $40, on a 40-hour week, and what the girl earns.

Q And when you refer to make-up on a job, what do you mean?

A The difference between a $40 minimum, on a 40-hour week, and what she actually earned.

TRIAL EXAMINER:

On a piece-rate basis.

THE WITNESS:

On a piece-rate basis; yes, sir.

* * * *

[1450] Q Was Bonnie Hamilton an unsatisfactory employee?

A No, sir.

* * * *

[1454] Q What would be the occasion that she would have a chance to fool around for a couple of hours?

A Actually, hers was a part-time job, and if we could get her to do it during the normal period of time, we would have been able to give her a second job to fill out a day. But she never would get through; get caught up with her work to enable us to try that. She should have been discharged instead of laid off.

* * * *

[1456] Q What did Nellie Wood do?

A Nellie Wood worked in the assembly section, and she stitched — she edge-taped, and she edge-basted.

Q Was she ever terminated?

A Yes; she was.

Q When?

A January 31st.

Q Was it a lay-off or discharge?

A It was a lay-off.

Q What were the factors which led to that decision?

A Nellie was a good, steady worker; conscientious. Her quality was fair. She was a little sloppy, but not enough to cause her lay-off on that basis alone. It was purely a question of lack of work.

* * * *

[1457] Q What did Evelyn Hudson do?

A Evelyn Hudson stitched down — stitched the sleeves, the cuff of the sleeves. She tacked the sleeve on the in-seam and the out-seam, and then turned the sleeve inside out by hand.

Q Was she ever laid off or discharged?

A She was laid off January 31st.

Q What were the factors that led to the decision to lay her off?

A Well, we had a situation there where we had two operators right in front of her; Grace Barnes who sewed wigan and sleeve lining to the sleeve; and Bonnie Thompson, who sewed the inseam of the sleeve lining and the sleeve.

With the cut-back in production, they had approximately two-thirds of a job left, and Evelyn Hudson, with the cut-back in production, would have had two-thirds of a job left, also.

Of the three operations, and the most easily absorbed by the other two operators that I mentioned, it was in our opinion that Evelyn Hudson could not have taken either of the other two jobs, because of the complexity. Evelyn Hudson was an operator who had to have a very simple operation; one that she could do without judgment, and without too much mechanical skill.

* * * *

[1458] Q Where did Ruth Brooks work?

A Ruth Brooks eventually worked up at Loganville Pants Company.

Q What did she do at Loganville Pants Company?

A She worked on back pockets.

Q Was she ever terminated?

A Yes; she was.

Q Do you know when?

A I believe the early part of January.

Q Do you know what the factors were that led to her termination?

A Yes; I do.

Q What are they?

A On instructions from me, Mr. Hughley had, during the past 30 days, had been gradually weeding down his work force. He had about 35, 40 operators — I think about 35, 38 operators, and he was making about 200 pairs of pants a day, 225 pants a day; whereas he only needed about — actually about 20 or 22 operators to do it. So after consultation with Mr. Hughley, the end of November, over that period there, he was instructed and was cutting his work force back right along.

Q Now had you ever known Ruth Brooks prior to the time she worked at Loganville Pants Company?

[1459] A Yes; I did.

Q Where did you know her?

A I knew her — she worked at Walton Manufacturing Company cutting in breast pockets.

Q What kind of work did she do when she was working there?

A Strictly mechanical work.

Q Was the work which she did satisfactory?

A The quality of the work was satisfactory, because it was a mechanical operation. The quantity was not.

* * * *

Q Did you make the decision to lay off Ruth Brooks? Was she laid off or discharged?

A She was discharged.

Q Did you make that decision?

[1460] A No.

Q Who made the decision?

A Mr. Hughley.

Q Did you discuss it with him before he made it?

A No.

Q Do you recall an employee by the name of Lela Beaver?

A Yes; I do.

Q Where was Lela Beaver employed?

A Lela Beaver worked in the Loganville Pants Company.

Q What did she do?

A She worked on the flies.

Q Was she ever terminated from the Loganville Pants Company?

A Yes; she was.

Q What were the circumstances of her termination?

A Following along with the idea of the continuing cutback of personnel to a reasonable amount for the production necessary in pants, it was necessary to take girls and have them do two operations, instead of only one. Lela Beaver was a good operator on one operation. It took her a long time to learn an operation; her break-in period was long. Once she did it, she did pretty fair work. But she was not the operator, in my opinion, that could do a duplicate operation; two operations, so therefore we did not have a full-time job for her, and we dispensed with her services.

* * * *

[1461] Q Did you know Pearl Coker was a union member at the time [1462] she was discharged?

A No.

* * * *

[1513] REDIRECT EXAMINATION

* * * *

[1516] Q (By Trial Examiner) Do I understand from your answers to the previous questions, Mr. Sharff, that you were opposed to the union gaining a recognition status in your plant?

A Yes, sir.

* * * *

[1517] Q Was this letter that was sent by your father, General Counsel's Exhibit 7, part of the effort on your part to avoid the union coming into the plant?

A Yes, sir; definitely.

* * * *

[1521] Q Did you tell or suggest to the supervisors that you were opposed to the union?

A I didn't tell them, but by my attitude and by my speech I think it could be safely assumed that I was not pro-union.

Q I believe — I haven't read your speeches yet.

A I didn't mean to be facetious, sir.

Q I haven't read your speeches, yet. However I did receive them in evidence. But I believe you did testify that the speech contained the reference that if the union came in, you personally would go out; is that correct?

A Yes.

Q I am saying that without having read the speech, I think that's what you testified.

* * * *

GENERAL COUNSEL'S EXHIBIT NO. 5

AMALGAMATED CLOTHING WORKERS OF AMERICA
(Label)

COPY

Winder, Ga.
Jan. 18, 1958

Arthur Scharff
Walton Mfg. Co.
Loganville, Ga.

Dear Sir:

The below named employees of Walton Mfg. Co. are members of the Amalgamated Clothing Workers of America and are serving on the volunteer organizing committee from your shop.

√Bonnie Hamilton	Nellie Ruth Hood
√Pauline McGee	√Lela Beaver
Jeanette Beavers—	√Evelyn Hudson
√Violet Ewing	Mary Lou Partain—
√Ida Harper	Lucy B. Brooks
√Francis E. Johnson	√Nellie R. Wood

The above named people have been fully advised of their rights under the National Labor Relations Act.

They are protected in their rights to join and assist the Union by Sec. 8, A (3) of the National Labor Relations Act as amended.

Sincerely,

(Signed) GARWIN BIGGS
Representative A. C. W. A.

cc: National Labor Relations Board

GENERAL COUNSEL'S EXHIBIT NO. 7

TO ALL EMPLOYEES OF WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY

We have now been in operation in Loganville long enough to work out most of the rough spots. We have much work to do to get our plants on a profitable basis but much progress has already been made. We feel that we are in position now to set policies for the future and naturally we want you to know about these benefits that you are getting directly from us! Please consider carefully the following:

1. *Your Wages.* The money you earn and take home with you is most important to you and your family. Before these plants opened earlier this year, we made a careful survey of wages paid in this area. Many of you have worked in other plants. We are proud of the fact that the rates we are paying are the best in the area in our industry. As you acquire more experience and skill those earnings will increase accordingly. Along with good production we must always consider quality and take pride in our workmanship. Let's work together to put out a quality product we can all be proud of.

2. *Our Plants.* We hope that before too long all of us can be in the same plant. However, at present we have excellent working conditions and machinery. We believe you enjoy comfortable rest-rooms, air conditioning, good equipment and our other working tools. Help us to keep our plant clean and efficient. It will be a far more pleasant place to work.

3. *Insurance Protection.* We are presently providing the following insurance protection for all our employees:

(a) Life insurance amounting to $600.00

(b) Hospitalization of $8.00 per day;

(c) Surgical fees up to a maximum of $200.00.

The items above are furnished without cost to our employees. Also, if an employee wants to provide insurance for his or her dependents, he or she can purchase it through the Company at a reduced rate.

4. *Vacations with Pay.* We believe that employees should have a vacation with pay each year. Therefore, as soon as school schedules are announced, we will set aside one week in June, 1958, during which the plant will be closed. You will receive vacation pay for this week according to the following schedule:

(a) If you have worked at least 9 months before June 1, 1958, you will receive a full week's pay;

(b) If you have worked at least 6 months but less than 9 months before June 1, 1958, you will receive 1/2 week's pay.

(c) If you have worked at least 3 months but less than 6 months before June 1, 1958, you will receive 1/4 week's pay.

5. *Paid Holidays.* We believe our employees should enjoy the holidays which are generally celebrated in this area. The following holidays will be granted at full pay:

Thanksgiving
Christmas
Fourth of July

We expect to close the plants on these days. If it is necessary that we work, employees working will get their regular pay plus holiday pay.

6. *Overtime.* Employees who work more than forty hours in a work-week will receive time and one-half for those hours over forty. Overtime on the same operation will be divided as far as possible.

7. *Retirement Plans.* Our plants have been operating for such a short time that we have not made any definite arrangements for pension payments when you retire. We want you to know, however, that we are considering this matter and will take action in the future to provide pensions.

8. *Dues and initiation fees.* We are happy that no employee has to pay dues or initiation fees to any outside union to work at these plants. You will *not be forced to make payments to outsiders* for the privilege of working here. *What earnings you make here are yours. No part goes to organizers.*

We have tried to keep you fully advised on the things that affect your work here. From time to time, as changes

are made, we will keep you fully informed. If you have any questions to ask, please feel free to talk to me at any time.

With best wishes always, I am

Sincerely,
(Signed) HARRY SCHARFF
Harry Scharff

NAME YANCEY, LUCILLE A.

DEPT _____ YEAR 1957

SOC SEC NO 260-52-0753 ADDRESS Box 253 Loganville, Ga.

WITHHOLDING STATUS	DEDUCTIONS					RATE OF PAY	CLOCK NO
						1.50	61

2

0

29	40	40.00			40.00	.90	7.30						31.80	1/17					29
30	40	40.00			40.00	.90	7.30						31.80	1/9					30
31	40	40.00			40.00	.90	7.30						31.80	8/					31
32	40	40.00			40.00	.90	7.30						31.80	8/7	64				32
33	40	44.69			44.69	1.01	8.00						35.66	1/14	113				33
34	4	1 42			37.42	.94	7.50						37.78	1/23	325				34
35	40	41.08			42.08	.95	7.70						32.43	8/30	462				35
36	38	42.13			42.13	.95	7.70						33.48	9/6	548				36
37	40	36.4		3.6	41.00	.90	7.30						31.80	9/13	731				37
38	40			1.5	41.10	.90	7.30						31.80	9/20	871				38
39	40	44			43.44	.98	7.80						34.46	9/27	1004				39
Q		31485	4.00	10.91	52976	.92	7.40						40.43						Q
T																			T
40	40	41.16	1.16		82.44	1.13	9.10						39.91	10/4	1042				40
41	4	4.04			4.04	.10	.760						4.56	10/11	1212				41
42	1	1.01			41.37	.56	4.40						19.91	10/18	1407				42
43	16	41.16		4	41.16	.96	7.70						32.44	10/25	1540				43
44	16	41.04		3.6	46.10	3.60	7.00						32.64	11/1	1676				44
45	16	40.49		1	16.10	.96	7.00						32.64	11/8	1811				45
46	16	41		1/4	14.50	3.25	4.50						11.57	11/15	2018				46
47	32	37.12		1.1	32.00	.72	5.90						29.33	11/22	2017				47
48	24	27.12		1.2	28.60	.72	5.90						25.35	12/29	2217				48
49	24	14.15			14.25	.55	4.40						1.10		2286				49
50																			50
51																			51
52																			52
Q		812	3.18	10.69	22150	.61	4590						11.13						Q
T		16148	4.18	21.60	78966	17.78	14374						62774						T

DATE STARTED	DEPT.	OCCUPATION	RATE	PER	DATE STARTED	DEPT	OCCUPATION	RATE	PER

FORM BM 178 SHAW-WALKER FOR WEEKLY PAY

CHARGING PARTY'S EXHIBIT NO. 2

WALTON MANUFACTURING CO.
Fine Boys, Students and Men's Clothing
Phone: 3341 Loganville, Georgia

* * * *

LELIA BEAVER No. 3, and *RUTH BROOKS*, No. 6, these operators were employed at the pants shop and I do not have accurate records as to why they were discharged, but looking at their pay, and the make-up shown on the slips, it is safe to assume that they were inefficient operators who were either replaced or dispensed, due to the fact that the lack of work turned out.

* * * *

VOL

III

VOLUME III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 77

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

WALTON MANUFACTURING COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 6, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

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Appendix to respondents' brief
Filed August 22, 1960

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 18,198.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY,
Respondents.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, SITTING AT WASHINGTON, D. C.

* * * * * * *

[38]* Mr. Thompson: Mr. Examiner, I'm a little bit confused here, that some of this stipulation was read and either my memory has completely failed me, or some of it was just recited by Mr. Joy. Now, I agreed to the written document that he is reading from and I also agreed that the stipulation that—to stipulate that Mr. Hughley was a super-

*Refers to page of the typewritten transcript of the testimony.

visor for his Loganville Pants Company. It was a paragraph that he recited there concerning Hughley working one place up through some date and then another place that I am not prepared to stipulate on because I am not that familiar with the dates at this time. The other portions I can stipulate.

Mr. Joy: I'm sorry, Bob, I understood you to say you were agreeing that he was supervisor at Walton and then at Loganville.

Mr. Thompson: I will agree with that, but I can't stipulate the dates you put in there at this time. In the first place, we don't think they are right; and the second place, we don't have access [39] right at the moment to the exact dates. This is the first I have heard of a date. You just all of a sudden in the middle of the stipulation put in a date which I didn't know was in there. Was it on that written sheet that you are reading from?

Mr. Joy: Not Mr. Hughley and Mr. Prosterman, no.

Mr. Thompson: That is the portion, and I don't want to be making an issue of it, I just merely cannot afford to stipulate something I'm not aware of.

Trial Examiner: I just want the stipulation to be exact so there will be no question about what is stipulated.

* * * * * * *

[43] I. S. PROSTERMAN.

* * * * * * *

[54] *Voir Dire Examination.*

Q. (By Mr. Thompson) Mr. Prosterman, are there other departments at this plant that you do not have the responsibility for?

A. Yes.

Q. What are they?

A. The shipping department, the office management and administrative department, the cutting department insofar as the production of the cutting department goes. There is another phase that I didn't mention, the control that I have over the patterns of the company. I make the patterns—designer, in other words.

Mr. Sheinkman: I don't quite understand that last part of [55] the answer.

Would you read that last?

Trial Examiner: He said he cuts the pattern; he designs the patterns.

Mr. Sheinkman: I see. Thank you.

Q. (By Mr. Thompson) Mr. Prosterman, what phases of this operation do you have charge of?

A. The designing the patterns, the quality of the cutting department but not the production, and in the production of the entire factory.

Q. What does that consist of? What do you mean by the production? What phases does that consist of in the manufacture?

A. Every phase included in the production of the manufacturing department.

Q. You have some general operations there, such as sewing, do you not?

A. Sewing operations, pressing operations.

Q. That's about it, isn't it, generally speaking?

A. Whatever it takes to make the garment from beginning to end.

Trial Examiner: Are these garments made from sample? I mean, are these garments sold from samples?

The Witness: They are sewed from patterns.

Trial Examiner: Are these patterns designed by you for a view to getting acceptance by trade, is that it?

[56] The Witness: Exactly.

Trial Examiner: And then the salesmen sell from the original samples which you produce, is that it; then the production comes in?

The Witness: Correct.

Trial Examiner: So that you are the one who originates the type of garment which is prepared at this plant? I just want to get that straight.

The Witness: That is right.

Trial Examiner: And you make the garment that the salesmen go out to sell?

The Witness: That is right.

Trial Examiner: And when they sell them, you manufacture them?

The Witness: That is correct. I am what you might term technically designer-manufacturer.

Trial Examiner: Any further questions?

Mr. Thompson: Yes, sir.

Q. (By Mr. Thompson) Mr. Harry Scharff holds what position with the company?

A. He is the president of the company, I believe.

Q. Does he maintain an office there at the plant?

A. Yes.

Q. And there is another Mr. Scharff—

A. Arthur Scharff.

[57] Q. What is his title?

A. I don't know his exact title.

Q. He is an official of the company?

A. Right.

Q. Is he located there at the plant?

A. That is right.

Q. Are they immediately above you?

A. That is right.

Q. Do you get your—any directions from them at all?

A. Yes, from Mr. Arthur Scharff.

Q. Are they there practically on a daily basis?

A. Yes, practically.

Mr. Thompson: If Your Honor please, I submit that this man is a superintendent like he says in a plant where you've got—it is a one-plant operation. The president and the vice-president are there. He doesn't even have charge of the entire production operation. The cutting room is handled separately; the shipping room is handled separately. He makes patterns; he makes designs; and then he supervises the cutting—not the cutting—the sewing, the pressing of these garments that are made at this plant. Those facts, and we've got the details of exactly what he does, do not make him out a managing agent of the company. He is not such an agent as contemplated in the Rule there. He is certainly not an officer or owner of the company. He is simply a superintendent or a supervisor as the Act [58] contemplates, and I think we have stipulated that. He certainly has no place of business that he is managing. He doesn't even have a separate operation that he manages.

Trial Examiner: To what extent are you supervised by Mr. Arthur Scharff?

The Witness: Well, first of all, designing it; he tells me what he believes will be required for sale to our customers—I have nothing to do with the sales department either—at which time I try to prepare the samples and patterns in accordance with his desires, that is, from the designing end. From the production end, he tells me how many garments we contemplate selling and what we should be prepared to produce, and advises me as to the number of garments that will be required and at what period of time they will be required. From that point on I am required to set the shop accordingly, set our production requirements accordingly. He also supervises me from the standpoint of quality of the finished product. Anything that comes to his attention that he believes is wrong with the finished product, he advises me of that. I take steps to correct it. He advises me of any complaints received from customers regarding the product.

That is the extent of my supervision. I believe I have covered everything.

* * * * * * *

[62] Q. What happened with garments that were manufactured or produced by an operator and the quality was not up to standard? What was done about the garment?

A. Are you talking about from the standpoint of her particular operation?

Q. Yes, sir.

A. In many cases, we busheled, or repaired, the garment; and in many cases, we allowed it to pass.

Q. Who did the repairing?

A. We have various repair people in the factory. I can't tell you exactly.

Q. Where did you inform her—make those statements to her that her work was not sufficient as to quality?

A. Where?

Q. Where.

A. At her machine.

* * * * * * *

[63] Q. (By Mr. Joy) Now, you said you did speak to her several times about it?

A. Yes, sir.

Q. About when?

A. About when?

Q. Yes.

A. Well, I would say from the time—from the period of approximately six weeks prior to the time of her discharge up until the time of her discharge, two or three times. Most of the time I just informed the supervisor to discuss her work with her and some times I discussed her work with her myself.

Trial Examiner: Was any record made of these admonitions?

The Witness: No.

* * * * * * *

[68] GARVIN BIGGS.

* * * * * * *

[87] Q. (By Mr. Joy) Did you ever receive written notification from any employees of Walton Manufacturing Company that they wished to withdraw from the Union?

A. We received a letter—or rather, it was placed in our office in Atlanta—from some employees stating that they wished [88] to withdraw from the Union. I received

the letter quite some time after it was supposedly placed in our office.

Mr. Joy: I ask the reporter to mark for identification as General Counsel's Exhibit 6-A for identification a letter addressed "To Whom it May Concern," and as 6-B an envelope addressed, "Georgia State Office, 94 Merrietts Avenue, N. E., Atlanta, Georgia."

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 6-A and 6-B for identification.)

Q. (By Mr. Joy) I show you General Counsel's Exhibits 6-A and 6-B for identification and ask if that is the letter you received and the envelope in which you received it?

A. Yes, sir.

Mr. Joy: Your Honor, I offer into evidence General Counsel's Exhibits 6-A and 6-B.

* * * * * * *

(The documents heretofore marked General Counsel's Exhibits Nos. 6-A and 6-B for identification were received in evidence.)

* * * * * * *

[89] Q. (By Mr. Thompson) Mr. Biggs, was there any other paid organizers working on this campaign of Walton Manufacturing Company other than the ones that you have named?

A. Other than the ones that I named?

Q. Yes, sir.

A. No. No one assigned to the campaign except the people that I named.

Q. You state no one was assigned to the campaign; did anybody, any other paid organizers, do any work in the campaign?

A. No, sir.

Q. Were you and these other four organizers staying here in this area while this campaign was going on, or did you stay in a hotel or a motel, or something, while this was going on?

A Part of the time.

Q. Where did you stay the rest of the time?

A. At our respective homes.

Q. Where are your respective homes?

[90] A. My home is in Greenville, South Carolina.

Q. Where do these other people live?

A. Mrs. Penny is in Cordele, Georgia.

Q. Sarah Broom?

A. Sarah Broom is from Greenville, South Carolina.

Q. Mrs. Rachel Barnes?

A. Mrs. Barnes is from North Carolina.

Q. What place in North Carolina?

A. Lexington.

Q. Where does Mr. Eiger live?

A. Mr. Eiger's home is in New York.

Q. What part of New York?

A. New York City.

Q. Does this office that you are working for maintain an office in the State of Georgia?

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[92] Trial Examiner: You've got an answer to that. Now, you are asking him another question as to whether or not they maintain an office in the State of Georgia.

Mr. Thompson: Yes, sir.

Trial Examiner: I can't see the materiality of that.

Mr. Thompson: The materiality does exist. If they've got an office in Atlanta, Georgia, where they have organizers, it bears on this issue that I am referring to, that they brought organizers in from all over the country when they had an office right here. They could organize this plant, if that is all they are interested in doing.

Trial Examiner: I will allow your question.

The Witness: Would you restate the question?

Q. (By Mr. Thompson) Does this organization that you are em- [93] ployed by have an office in the State of Georgia?

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Now, does the Amalgamated Clothing Workers of America have an office in Georgia?

The Witness: Yes.

Trial Examiner: In Atlanta?

The Witness: Yes.

Trial Examiner: Now, you may continue.

Mr. Thompson: Thank you, sir.

Q. (By Mr. Thompson) Did you write this notice which has been [94] identified as General Counsel's Exhibit Number 4?

A. Sir?

Trial Examiner: Did you write this notice which is General Counsel's Exhibit 4, this notice.

The Witness: Yes; I assisted in writing it.

Q. (By Mr. Thompson) You assisted in writing it?

A. Yes.

Q. Who else contributed to it?

A. The staff named at the bottom of the page.

Q. Anybody else?

A. In composing the letter?

Q. Did anybody else contribute towards it?

A. No.

Trial Examiner: You are the one referred to as "Woody" Biggs?

The Witness: Yes, sir.

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[96] MILTON EIGER.

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[110] Q. (By Mr. Thompson) How many times have you ever been in the plant at the Walton Manufacturing Company?

A. I never was there, sir.

Q. Well, how many times were you in the Loganville plant?

A. Never.

Q. How long have you been employed by this Union?

A. February 4th, 1957.

Q. Have you been continuously employed by them since that time?

[111] A. Yes, sir.

Q. Approximately how many classifications, job classifications, are there in a clothing plant of this kind?

A. A clothing plant, I would say it actually depends on the shop. Some shops have them broken down as far as forty or fifty different types of operations on a garment.

* * * * * * *

Q. And somewhere between one and up to the number you mentioned, that is the variety in these type plants; is that right?

A. Yes.

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A. I was a tailor and a cutter, better known—they call it in the trade a fitter. On the market it is called a fitter. I did cutting and tailoring work.

Q. Did you operate a machine of some kind when you were operating?

A. I never operated a machine, but I know what they do. I explain to somebody how to work it.

Q. Did I ask you whether you knew or not? I asked you whether [112] or not you operated a machine.

A. No, sir.

Trial Examiner: You mean by that you never operated a machine or that you didn't operate a machine as a general practice while you were working?

The Witness: I never operated a machine, sir. Can I clarify that, sir?

Trial Examiner: Yes.

The Witness: We have price makers in the union who never worked in a shop to make prices on garments.

Trial Examiner: You haven't clarified it, but go ahead.

Q. (By Mr. Thompson) In a plant where garments are being made by machines as opposed to a tailor, isn't it true that some of the operations require more skill than other of the operations?

A. Yes, sir.

Q. Now, in an ordinary plant—there again I'm contrasting it with one that makes clothes by hand and a plant where they have machines—give us the names of two or three of the highest skilled operations.

A. Sleeve setter, baster by machine, pocket maker.

Q. What—give us the names of one or two of the jobs which require the least amount of skill.

A. You would call it yoke baster, the part joining the backs. That is just a straight seam, or somebody just what they call piecing up the linings—just making the seams on the linings.

[113] Q. What, in your mind, determines the skill of these jobs? What makes one require more skill than the other, in your mind?

A. It is a little harder to produce. The volume that you produce per units per day would make it that much higher.

Q. You mean the work you have to do on the garment is harder to do on the one operation as opposed to the other; is that correct?

A. That is correct, sir.

Q. Now, the various categories of people between that lowest skill and the highest skill would vary in their skill according to how it is to do that job; is that correct?

A. That is right.

Q. Has it been your experience that the jobs are paid —the pay for each of those jobs is compensatory with the amount of skill that is required?

A. On a general practice, true. It runs pretty fairly even.

Q. In other words, the person doing the more highly skilled jobs would be paid more than the persons doing the less skilled jobs?

A. Yes, I find it so.

Q. Can you give me the names of the employees of Walton Manufacturing Company who were in Breeze Inn the day that you referred, that you and Mr. Biggs and some of these other people were in there?

A. I'm sorry. I can't recollect. It has been that far back.

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[115] Q. Did you know Mr. Scharff at the time?

A. Yes, I knew him. That was the second time I was pointed out to Mr. Scharff.

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[119] The Witness: If I recollect, we had three that sat with us for a while. I don't know whether they sat with us or the next table. I'm trying to think how the setup was; I'm trying to think back and picture it—it has been some time ago and I'm trying to figure out where we were sitting. I remember there was three people, but the names I don't remember.

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[122] MRS. SARAH BROOM.

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[128] Mr. Thompson: I want to object to the question, Your Honor, on the grounds that it calls for a conclusion by the witness.

Trial Examiner: I'm going to let it in, describe what happened. If it is not tied up, we'll strike it.

Mr. Thompson: Very well.

Q. (By Mr. Joy) When were you followed?

A. Well, the first time—

Trial Examiner: Suppose you stop using the term "followed." That is the objective term. It calls for a conclusion. State exactly what it was the witness saw or observed which causes her to state she was followed.

Mr. Joy: It is kind of difficult. I don't know any other word to use.

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[132] Trial Examiner: Now, he didn't follow you to the restaurant, did he?

The Witness: No, he went back to the plant.

Trial Examiner: You don't know where he went; you just didn't see him.

The Witness: No, I didn't. I didn't see him go to the plant and pick those up.

Trial Examiner: You hadn't seen him since the time that you had left the second girl's house.

The Witness: That is right.

Trial Examiner: Until the time you saw him in the restaurant.

The Witness: That is right.

Trial Examiner: You don't know where he went in the interim.

[133] The Witness: No, sir.

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Q. (By Mr. Joy) And when you stopped at the first house, what became of him?

A. I didn't see him. He passed and went on down the road.

Q. Now, when you left there, did you go to another house?

A. Yes, sir.

Q. Did you see him at that time, while you were going to the [134] other house?

A. I didn't see him at that time, Mr. Joy.

Q. When you arrived at the second house, did you see him there?

A. No.

Q. Did you—I believe you said you went to three houses?

A. Yes, sir.

Q. When you were going to the third house, did you see him?

A. No.

Q. Did you see him after you arrived there?

A No.

Q. Did you see him any more that day?

A. Yes, sir.

Q. Where and when?

A. I saw him down at the Breeze Inn.

Q. What time was that?

A. The—it was in the afternoon, I would say about—between 3:00 and 3:30.

Q. And was he there when you got there, or did he arrive after you got there?

A. I arrived first and he came in.

Q. How long afterwards?

A. I guess I had been there about five minutes.

Q. While you were going there, did you see him; while you were enroute?

A. No, sir.

[135] Q. Did you at any time get the license plate—

Mr. Joy: Pardon me. I withdraw the question.

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[137] Q. (By Mr. Thompson) The times you mentioned being in Loganville, in that vicinity, during the latter part of November of last year, did you come down here in your own automobile?

A. I came down here in—yes, in a rental car, yes, sir.

Q. Did you get the rental car in South Carolina?

A. Did I get my rental car in South Carolina?

[138] Q. Yes.

A. Yes, sir.

Q. And it had a South Carolina tag on it—

A. Yes, sir.

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[140] Q. Now, give me the name of the first person you contacted on November the 30th.

Mr. Sheinkman: Object to the question, sir.

Trial Examiner: What is the purpose?

Mr. Thompson: She testified that she went around contacting, she mentioned five or six homes that she went to. Certainly we are entitled to know the names of the people she went to see to pursue that testimony to see if she is telling the truth, [14] for one thing. We've got her on cross-examination and if we can't find out that way, cross-examination means nothing.

Trial Examiner: The charge here of 8(3), possibility of reprisal, is involved. I presume that is the basis for the objection. Is it?

Mr. Sheinkman: Yes, sir.

Trial Examiner: Normally I would be inclined to allow the question. I'm going to sustain the objection since it is immaterial which employees she visited. The point involved was the point that she was being followed from place to place and I think that is the only materiality of the testimony, so I am going to sustain the objection.

Mr. Thompson: I intended to ask the same question with respect each place that she made a call to that day. I would like to ask those questions. I assume that your ruling would be the same.

Trial Examiner: You are asking for the names of the persons on whom she called?

Mr. Thompson: That is correct.

Trial Examiner: Yes.

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[143] Q. (By Mr. Thompson) Mrs. Broom, what position in management [144] is Mr. J. B. Stephens; what position does he occupy with this company?

A. I don't know.

Q. Do you know whether he does, in fact, occupy a position in management?

A. No, sir.

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[145] MRS FRANCES ELIZABETH POWELL

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[161] Q. Do you remember whether any other official of the Company, Arthur or Harry Scharff, spoke, or was it only Morris that spoke at that time?

A. I don't remember right offhand, sir.

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Q. Did he tell workers what to do and what not to do? Did you ever see him doing that?

A. No, sir. I never saw him telling anybody what to do, but [162] I have seen him looking at some of the work.

Q. You have seen him look at some of the work?

A. Yes.

Q. And you say he got up and said he was speaking for himself—

A. Not for himself; for his brother and father.

Q. I see.

And after that speech, did you see Morris on that Christmas party held on—around—when the hams were handed out? Did you see Morris there; do you remember?

Trial Examiner: I don't know anything about any hams being handed out, sir. Let's get that testimony.

Q. (By Mr. Sheinkman) Let me ask you a question. Did you receive anything from the Company?

A. Yes, sir.

Q. What did you receive?

A. A ham.

Q. Did all the employees there receive a ham?

A. Yes, sir. As far as I know, everyone did.

Q. And who handed out the hams; do you remember?

A. No, sir. I do not.

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[163] Q. About how many people were laid off on January 31st, at the same time you were?

A. I would say anywhere between 13 and 20; I don't know exactly how many.

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[165] Q. (By Mr. Thompson) Do you recall when it was that "Murph" made this statement to you that you had improved?

A. No, sir. Not the exact day.

Q. Was it before or after you were transferred to this other job?

A. It was after I was transferred.

Q. It was after this other lady—

A. After Mrs. Yancey was laid off.

Q. After Mrs. Yancey was laid off?

A. Yes, sir.

Q. How long after was it?

A. I would say anywhere from four to five weeks.

Q. Four to five weeks?

A. After she was laid off and I was given the job.

[166] Q. And who else was present when this was told to you?

A. Well, I don't know if anybody heard it, but I can name some of the girls that were right around where I was.

Q. Who are they?

A. It was Mary Alice Winslett, she worked in front of me; Mrs. Annie Brooks worked behind me; Odele Barnes was working to my right.

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You say you were having makeup where you were transferred to the new job?

The Witness: Yes, sir. I did have makeup.

Trial Examiner: Was that regular?

The Witness: Yes.

Trial Examiner: Right up to the time you were transferred?

The Witness: Well, I can remember one time that I drew a check for forty dollars and thirty something odd cents.

Trial Examiner: That would not be makeup?

The Witness: No, sir.

Trial Examiner: But other than that one check, you had makeup right along?

[167] The Witness: Yes, sir.

Trial Examiner: And then you were transferred to Mrs. Yancey's job?

The Witness: Yes, sir.

Trial Examiner: Did you have makeup on that job?

The Witness: No, sir. I didn't.

Trial Examiner: Never?

The Witness: No.

Trial Examiner: How long after you were transferred to Mrs. Yancey's job did you get the machine, your old machine, moved up?

The Witness: It wasn't a day.

Trial Examiner: It was just that first day?

The Witness: Yes, sir.

Trial Examiner: Was that crying spell that you told us about caused by the fact that you were not able to operate her machine?

The Witness: Yes, sir. It was.

Trial Examiner: At least, you found it impossible to operate?

The Witness: Yes, sir.

Trial Examiner: It got you blue and down?

The Witness: Yes, sir.

Trial Examiner: And then you asked them to get you your old machine?

[168] The Witness: (Shakes head affirmatively.)

Trial Examiner: After that you had no trouble?

The Witness: That's right.

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Q. (By Mr. Thompson) Mrs. Powell, at the time the group of employees were in the room with—in the office where the girls were, where the layoff was announced, didn't "Murph" make a [169] statement that there was not enough work and that was the reason for the layoff?

A. Yes, sir. I believe he did.

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[170] Q. (By Mr. Thompson) Mrs. Powell, weren't you also told at that time that the Union didn't have anything to do with the layoff?

A. Well, they didn't specifically point me out and tell me that.

Q. Wasn't the group told that, though?

A. One of the girls in the office that day asked if the letter out on the board had anything to do with it; "Mr. Murph" said it did not, and then again after he said that, he said he didn't want to talk about it.

Mr. Thompson: No further questions.

Mr. Joy: Nothing else here.

Trial Examiner: He said he did not have anything else to do with it and he didn't want to talk about it; is that your answer?

The Witness: As well as I can remember, and understood it. He did say that.

Q. (By Mr. Thompson) I understood you to say that after it was over he said that he didn't want to talk about it; isn't that what you said?

A. Presumably that he didn't want to talk about it. I presumed that he didn't want to talk about it.

[171] Q. You presumed that he didn't?

A. Yes.

Trial Examiner: Did he say that?

Q. (By Mr. Thompson) In other words, he said that—

A. I don't know whether he said it or not.

Q. You are just saying what he—presumed that he didn't want to talk about it?

A. Yes, sir. By him cutting me short.

Q. All he said was: the Union didn't have anything to do with it?

A. He said the letter on the board didn't have anything to do with it.

Trial Examiner: And then from that you presumed that he didn't want to—

The Witness: Yes, sir. That he didn't want to talk about it.

Trial Examiner: We finally got that straight.

Q. (By Mr. Thompson) Isn't it true, Mrs. Powell, that "Murph" said the letter or the Union had nothing to do with it?

A. To the best of my knowledge, I believe he did.

Q. That is what he said?

A. He or either Mr. Morris, or Arthur; I don't remember which of the three said that, but to the best of my knowledge, I do believe that it was said.

Q. Thank you very much.

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[175] Mr. Joy: I said that the same factors which are attributed or stated as the reasons for selection of certain employees, the alleged discriminatees, the factors that are named as being the reasons for selecting them for their termination also existed with respect to many other employees who were not laid off and who either had no Union activity or such activity was not disclosed.

Trial Examiner: Do you contend also that there was no necessity for a layoff at that time, or is that not part of your contention?

[176] Mr. Joy: No, sir. We do not go into that.

Trial Examiner: I just wanted the record clear.

Mr. Joy: No, I think they can well establish the fact that there was a reduction in force.

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[179] The factors in this business were first—I'm not necessarily listing these in their order of importance—the quantity of production of employees; these people on piece rates, the number of garments that they were able to turn out in a given period of time was a factor which was considered. The quality of the work which they did; most of them are operating sewing machines, and the finished product that they were able to turn out. By that I mean the finished portion they do; was taken into consideration, the appearance of it. the craftsmanship that was used in producing that product.

The attitude of the employee; as "Mr. Murph" testified concerning one of them already; was a factor which was taken into consideration, whether they were cooperative,

whether they balked at being given instruction or correction, whether they were able to get along with the other employees or with their supervisors; was a factor which was considered in some of the cases. It was considered in each case, but it was an important factor in some of the cases.

The other factor which comes to mind at the present time is the fact of seniority. Now, with respect to seniority, I expect the evidence to show that where there were two employees doing a given job and they both were comparatively equal, then the one with the greatest seniority, as a general rule, would be [180] retained, and the one with less seniority would be laid off. That is not—that won't hold true in every case, but in the cases where there was no distinction between the people involved on the other factors, then seniority was taken into consideration.

Trial Examiner: You had three factors, is that it?

Mr. Thompson: Actually, there were four: there would be quantity, quality—

Trial Examiner: The general—

Mr. Thompson: Attitude of employee.

Trial Examiner: And seniority.

Mr Thompson: That is correct.

Mr. Scharff reminds me that there is another factor which will appear in some of the cases, and that is the versatility of the operator. There we are referring to whether they are familiar with a single operation or whether they are qualified or adapted to do more than a single operation, of course, which would be important when you are cutting back your work force.

Trial Examiner: Thank you very much.

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MRS. PAULINE McGEE.

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[187] A. Yes, I remember Morris saying that he was speaking to us as a friend, not as an employer, and he was speaking for his father and his brother.

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Q. Do you remember anything else?

A. He also said he wasn't telling us to vote for the Union or against it, but to do as we pleased, but he was not having the Union himself; if the Union came in, he wouldn't be there.

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[189] Q. Do you recall what was said in that second one?

A. No; he said some of the same things he said in the first one, and he was telling us the price rates, what the Union would pay, and said if we would check them with ours—with his rates—we would find out that we were getting more than what the Union would pay us, and he also told us it cost a lot to join the Union, and that each department would pay different fee to join, and would pay so much a month; the cutting room would pay one fee and the sewing machines would pay a higher fee and the press room would pay another fee.

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[194] A. Well, about ten minutes before five o'clock, my floorlady, Myrtle Ewing, came to my machine where I was working and said Morris wanted to see me in his office, so I started in the office. There was a whole line of girls lined up out in the hall. We waited out there until Morris,

"Murph" and Arthur came in. He called us into the big office and "Murph" and Morris—"Murph" spoke up and said that Morris and Arthur had asked him to do the speaking and he said, "What I've got to say is short and not so sweet," and he told us that we were all going to be laid off. Some of us asked him if it was temporary and he said, "For the time being," so I spoke up and asked him why he was laying me off, that I was the only one that was doing the job, that same kind of job at the plant; he said they was going to have to make some changes and some girls would do three or four jobs. Some of them asked him did seniority mean anything and he said, "No, seniority doesn't mean anything." I asked Morris did my name being on the letter on the board mean—was that the cause I was laid off, and he said no, that wasn't the reason.

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[198] Q. Did Harry Scharff ever tell you your work was bad?

A. He never bothered anybody in the plant.

Q. Did Arthur ever bother you?

A. No, sir.

Q. Did you ever see Arthur bother any other workers?

A. No, sir.

Q. Did you ever see Arthur telling—did you ever see Arthur talking to supervisors in the sewing department?

A. No, sir.

Q. Did you ever see Arthur talking to "Mr. Murph" in the sewing department?

A. No, sir.

Q. Where did Arthur spend most of his time?

A. In the shipping department.

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[229] Trial Examiner: You answer the best way you can.

A. According to my best recollection Johnnie Starrett was on make-up and came out of it pretty well. That's to the best of my recollection.

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Q. Those people were not discharged at the same time Mrs. Yancey was, or at any time thereafter, were they?

A. I believe Frances Allgood was discharged.

[230] Q. When?

A. If you will review the list of names. I don't believe any of the others were, but Frances Allgood was.

Q. When?

A. I believe she was discharged on January 31st. I believe, now. I—

Q. All right. Was she recalled at any time?

A. I don't think so.

Q. Now in so far as you know was Mrs. Yancey ever given a separation notice?

A. I can't recall, sir.

Q. Do you know what was the policy as to giving separation notices? When they were given, and when they were not?

A. Well, to the best of my knowledge separation notices were not given when the reason for the lay-off was lack of work.

Trial Examiner: You mean when it was given for any other reason, then they did get a separation notice?

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[233] Q. What was the particular instance or reason that caused the discharge on that particular day?

A. Mr. Examiner, I have to tell came back of this thing. In other words, I've got to say the reason on that particular day was the culmination of things that happened previously to it.

Trial Examiner: Answer the question the best way you know how.

A. Grace McCart's quality had been poor from the first day I came there. I constantly admonished the supervisor. The supervisor constantly admonished Grace McCart about the bad work which she was doing. There were several things that she did not do that were considered poor quality. She did not set her collars properly. She did not sew her collars properly. There were holes left. We had an enormous amount of repair work on her jobs. There were times when we had one girl standing at the table--little girl we had there examining--her first inspection, for a whole day or more, ripping work that had to go back to the machine to be fixed.

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[234] Trial Examiner: Yes, sir. I think you have given us enough background. Now, tell us what happened on that day.

A. On that particular day, the day previous, she had set a large number of collars improperly. She had incorrectly matched the thread on the operation. I just felt that we had had enough.

Q. When you said that the supervisor had constantly admonished her or words to that effect, do you know that to be a fact of your personal knowledge?

A. Let me put it this way. I instructed the supervisor to admonish her and the supervisor reported back to me that she had.

Q. Mr. Examiner, I move to strike the testimony that she had been constantly admonished because that is nothing but hearsay.

Trial Examiner: To the extent that he was not present he cannot say that she was admonished.

A. I say to the extent that I was present, she was admonished, I was present several times.

Trial Examiner: Don't volunteer any information. Just answer the question as put to you.

Q. When were you present? When were you present when she was admonished?

[235] A. I don't remember the exact date.

Q. About when?

A. I would say approvixately two weeks before that. Approximately two weeks before that.

Trial Examiner: On how many occasions were you present when this Miss Grace McCart was admonished for poor work?

The Witness: I—

Trial Examiner: On how many occasions were you present personally when Grace McCart was admonished for poor work?

The Witness: I don't know the exact number. I would say at least two times.

Trial Examiner: All right, now. On these two occasions, how long were they before she was discharged?

The Witness: Approximately two weeks to four weeks.

Trial Examiner: Now, what was the last time before discharge that you personally heard her admonished?

The Witness: I would say approximately two weeks.

Trial Examiner: And prior to that that you heard her admonished.

The Witness: Possibly around two weeks before that.

Trial Examiner: On the occasion just preceding her discharge, that is the one two weeks before her discharge, had you ever heard—exactly what did you ever hear which you call an admonition?

The Witness: I overheard the supervisor telling Grace [236] McCart that her work was bad.

Trial Examiner: Are those the words the supervisor used?

The Witness: I do not know the exact words.

Trial Examiner: To the best of your recollection, give us the words as you remember them.

The Witness: I'm sorry. I cannot give you the words better than what I have said. She did not tell her that her work was bad, but she pointed out that she was doing various things on the collars. Various things.

Trial Examiner: In other words, the statement that the work was bad is your conclusion.

The Witness: That is correct.

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[239] Q. Did you have any particular monetary standards that you apply as to how much your people should earn to be retained?

A. No.

Q. Did you not tell that to Mrs. Coker—that you wanted every operator on that job to be capable of making $50.00 or $60.00 a week?

A. I did. I told her that I thought an operator on that job should be capable of earning at least $50.00 a week.

Q. $50.00.

A. (Nods head affirmatively.)

Q. Did Mary Lou Partain earn $50.00 a week on that job?

A. No. She did not.

Trial Examiner: What was that last name, please?

Mr. Joy: Partain. P-A-R-T-A-I-N.

Q. As a matter of fact, Mary Lou Partain had makeup there a great many weeks, hadn't she?

A. Mary Lou Pratain was not considered a regular operator.

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[241] Q. (By Mr. Joy) The last pending question was, did Mary Lou Partain have makeup?

A. No. She had no makeup pay.

Q. Had no makeup pay.

A. I'll explain that. Mary Lou Partain was considered a utility operator. A utility operator in our factory is not considered to be on the piece work. And therefore, we show no makeup pay.

Trial Examiner: Do I understand, Mr. Prosterman, she was on a weekly salary, regardless of the amount of production she made?

The Witness: That is correct, sir.

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[245] Q. (By Mr. Joy) Were any other employees hired after Bonnie Hamilton's lay-off to work on that operation?

A. No.

Trial Examiner: And by "that operation," you are talking about welt setting.

Mr. Joy: Yes, sir.

Q. (By Mr. Joy) Who is performing the welt setting since Bonnie was laid off?

A. Lucille Yancey has done the principal amount of the work, and a small amount of the work has been done by an operator by the name of Lonabelle Camp.

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[247] Q. (By Mr. Joy) Has anyone been hired since that lay-off since January 31st who has worked on back-seaming?

A. No.

Q. Has anyone been hired since that January 31st lay-off who has worked on flap pockets?

A. No.

Q. How about patch pockets?

A. No.

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[250] Trial Examiner: In view of that, what made you select Pauline McGee for lay-off and not the other girl?

The Witness: I felt that Charlotte Findley had a greater potential. She progressed more rapidly on her job than did Pauline McGee.

Trial Examiner: Can you explain that more specifically? What do you mean by "progressed more rapidly"?

The Witness: Both of the girls were showing make-up at that time, and from the time that we started them

both on the job until the time of the discharge Charlotte Findley had shown greater progress. She had shown a—that she earned more money on the job. That was one part.

Trial Examiner: Less make-up than the other.

The Witness: Less make-up than the other.

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[257] Q. (By Mr. Joy) But I believe she had as good a record or better than many other employees.

A. Than some.

Q. Was it as good or better than Mattie Lou Fulchers?

A. Offhand I would say it was not as good.

Q. How would you compare it with Claudine Kilgore's?

A. Her record wasn't as good as Claudeen's.

Q. How would you compare it with Margaret Britt's?

A. Not as good as Margaret Britt's.

Q. How would you compare it with Charlotte Findley's?

A. This I can't remember. I believe that Charlotte had a better record.

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[258] Q. Since she was laid off has anyone been hired to perform the felling operation that Ida Harper performed before?

A. No.

Q. Who has been doing it?

A. Well, first we started out by having Geneva Harris, the girl that was originally intended to take over that job. However, we increased the operation of Geneva Harris, causing her to require more time on the original op-

eration and usually performed this operation by several girls.

I will have to qualify that. It's a little complicated. The job as it stands is a very small job in the factory requiring a production rate of approximately 400 a day, required approximately five hours' work. We cut our production down to approximately 300. Therefore, it wasn't a full time job for [259] any particular operator.

In the meantime we had eliminated another job called bottom hem basting, which was the job formerly done by Pauline McGee. As I recall, the operator left. Charlotte Findley did not have full time work. So that particuar job was farmed out, so to speak, among two or three different operators, depending on who had the time to do it at that particular time. It was performed and is being performed today by Charlotte Findley and Geneva Harris, and Mary Alice Winslett; and that's only three of them. And it is possible that there may be others who also have done that work at various times.

Q. Do you know whether Frances Johnson's termination was a lay-off or discharge?

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[260] Trial Examiner: What were the reports that you received about her?

The Witness: The reports that I received were she liked to play around. She wouldn't stick to her job. Spent a lot of time in the washroom. Talked excessively.

Trial Examiner: Had she been warned about these things?

The Witness: Yes.

Trial Examiner: On how many occasions?

The Witness: This, I don't know.

Trial Examiner: Frequently?

The Witness: This I can also not say.

Trial Examiner: On how many occasions did you instruct your supervisors to warn her?

The Witness: I cannot say how many occasions.

[261] Trial Examiner: Have you any idea at all?

The Witness: No. I can say she was the subject of general disscussion at various times, but I cannot say how many times.

Trial Examiner: Frequently?

The Witness: Frequently; yes.

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Another thing, too, with all the bad things I might have said about this girl, there was something good about her, too. When she wanted to work, she could work. I have seen her sit [262] down at that machine and turn out 90 coats an hour. But generally, she would turn out 45 or 50. So we felt there were some hopes.

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[266] Q. Why was she selected to be laid off?

A. I had a section—she was in the lining section at the time. I had five people in that section. On some occasions I had another person—it was about five and one half people. I found it necessary to reduce my force by two operators. And since I felt that Elizabeth Johnson and Mary Barnes were the [267] least qualified in that section, I laid them off.

Q. Who were the other three?

A. The other three. There was Annie Brooks, Ima Jean Meeks, and Adell Barnes. And what I said about a

part time operator was this Mary Lou Partain. She also did some work in the lining section.

Q. Was Mary Barnes laid off at the same time?

A. Yes.

Q. Was Mary Barnes recalled?

A. Mary Barnes was recalled. Yes.

• • • • • • •

Trial Examiner: Yes.

Q. Was Mary Barnes receiving makeup pay before she was laid off?

A. I believe she was.

Q. Was Elizabeth Johnson receiving makeup pay before she was laid off?

A. Yes.

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[270] Q. Who absorbed her work?

A. Her work was done partially by the supervisor—by her supervisor.

Q. Who was that?

A. Mr. Carter. And at various times by various operators. I think I can name a few. I can't name them all.

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[275] Q. Isn't it a fact that she was pretty much a utility operator and used on many operations?

A. She was used on other operations. She was not a utility operator.

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[277] Q. Has anybody been hired to work on either of those operations since she was laid off?

A. No.

Q. How did her production compare—how did her production compare with that of Johnnie Starrett?

A. Slightly lower.

Q. Isn't it true that Nellie Wood came out as a make-up much earlier than did Johnnnie Starrett?

A. I can't answer that. I don't recall.

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[293] A. That's right. Pardon me. I would like to qualify that, sir. He asked me the plant; I assumed he meant the sewing portion of his plant; not his office. And I answered the question on that basis.

Q. Was he at the Walton Manufacturing Company premises during this period that you were asked about the plant?

A. Yes.

Q. Was he there daily?

A. I would say almost daily. I can't say—

Q. And what was your relationship to Mr. Morris Scharff?

A. Morris consulted with me—or, rather, I should say I consulted with Morris quite often regarding technical matters of various types. In other words, Morris was available for consultation when and if I needed him.

Q. Did you consider him as your supervisor?

A. No, sir.

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[294] PAULINE McGEE.

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[301] Q. Right after Mr. "Murph" came there, which would be September, as you stated, and the time that the pants were made in the plant, starting in January, how

many times did you see Mr. Hughley over there instructing Mr. "Murph" on how to operate the plant?

A. I didn't count the times. He was in there lots of times.

Trial Examiner: We are talking about the period between September, 1957, when Mr. "Murph" came to work in the plant, and before the pants plant came in. How many times?

The Witness: I don't know. I don't know how many times. He was in there a lot; a lot of times.

[302] Q. (By Mr. Thompson) Would you say it was more than ten times?

A. I don't know. I didn't count them.

Q. I am just asking your best estimate. As I understand, you don't know the exact number.

A. No.

Q. Would you say it was five times during that period?

A. He was in there very frequently.

Q. What was he doing in there?

A. I don't know what his business was, and he would always pass by and speak to us and have something friendly to say.

Q. You got on the stand yesterday and said he was instructing Mr. "Murph" about the plant. You don't know for sure what he was doing until after he came there.

A. One time he was at the sewing machine and showing how to do the operation.

Q. I am attempting to confine the discussion to the period between September and January, when the pants

were made at another place. Now the truth of the matter is that you don't know what Hughley was doing over there, except right after "Murph" started, except that you saw him over there, isn't that right?

Trial Examiner: Do you understand the question?

The Witness: I don't know whether he knows what he is asking, himself.

[303] Mr. Thompson: I want the record to show that.

Trial Examiner: I am sure Mr. Thompson knows what he is talking about. I am trying to find out whether you know what he is talking about.

The Witness: I don't understand the question.

Q. (By Mr. Thompson) Mrs. McGee, you testified yesterday you saw Mr. Hughley over there instructing Mr. "Murph" on how to run the operation; isn't that right? Do you recall testifying to that effect?

A. I don't know if that was the exact words, or not.

Q. Do you recall testifying to that effect? That's my question.

A. I said something about it. I don't know whether it was the exact words, or not.

Q. Now you testified here today that shortly after Mr. "Murph" came there you observed Mr. Hughley demonstrating or illustrating or pointing out to him the way that you and the other girls do work; isn't that right?

(Witness nodded affirmatively.)

Q. Now my question is this—let me say this, first: You also testified that during this period from October or September to January you saw Mr. "Murph" in the plant, throughout that period. Is that right? Is that correct? Mr. Hughley, I mean.

A. I saw him come in several times; yes.

[304] Q. Now my question is this:

Trial Examiner: Excuse me. You are saying "several," now. Previously you said "many times." Now which is—

The Witness: He was in several times during each week.

Q. (By Mr. Thompson) The truth of the matter is you don't know what he was there for except in September when you said you saw him point out to Mr. "Murph" what the operation was, you don't know what he was doing those other times, do you?

A. I wasn't at the machine talking to him. I was like everybody else. Just seeing him in the plant.

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[305] Q. Now isn't it true that in that speech—this was the first speech that you mentioned. I believe you mentioned two speeches.

A. Yes, sir.

Q. Isn't it true in that speech Morris Sharff made the statement that nobody would be fired because of the union if they were for it or against it?

A. Yes, sir.

Q. And didn't he also tell you in that speech that you and the other employees were free to talk about the union during [306] your lunch period and on breaks?

A. Yes, sir.

Q. Did Mr. "Murph" ever make any mention of unions to you at all?

A. Not by the direct name.

Q. By that you mean he never made any mention to you personally, did he?

A. He didn't say anything about the union to me.

Q. That's my question. You were present at the time the lay-off was announced in the office area of the plant; is that correct?

A. Yes, sir.

Q. Do you recall what was said about unions at that time?

A. Yes, sir.

Q. Isn't it true that both Morris and Mr. "Murph" made the statement that the union or the letter had nothing to do with the lay-off?

A. Yes, sir.

Q. Do you know anybody that was involved in that lay-off who got a separation notice?

A. No, sir.

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[310] MRS. LUCILLE YANCEY.

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[311] Q. Did you have any trouble with Mrs. Grace Higgins about being instructed in your—

A. Well, I wouldn't say that I had trouble. We had discussions [312] about the job several times, but not trouble.

Q. Did she ever reprimand you about it?

A. Beg your pardon?

Q. Did she ever reprimand you about it?

A. No, sir.

Q. Did Murph ever reprimand you about your work?

A. No, sir.

Mr. Thompson: I want to object to the questions concerning whether somebody reprimanded her or not. It calls for a conclusion on the part of the witness. She's here to testify to anything that might have taken place and give the details of it, but to give a conclusion of this kind is improper.

Mr. Joy: I'll rephrase the question.

Trial Examiner: The question has been withdrawn. Rephrase it.

Q. I believe you have already testified that Mrs. Higgins never told you that your work was not satisfactory. Did Mr. Murph ever tell you your work was not satisfactory?

A. No.

Q. Did Mr. Hughley ever tell you your work was not satisfactory when he was there?

A. No. He didn't.

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[319] Trial Examiner: Who said to Doc, "I'll have to lay you off."? Because there wasn't enough work.

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[324] Trial Examiner: That is the name of your supervisor, is it not Mrs. Higgins?

The Witness: Yes.

Trial Examiner: Did you have any argument with Mrs. Higgins at any time during your employment?

The Witness: No. We had discussions.

Trial Examiner: Well, now, you call them discussions. What were these discussions about?

The Witness: Well, it was about the length of the lining that went to the coat. Some would be short and some would be long.

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[326] A. I would say I would see him, if he was there, I would see him maybe once or twice a day or sometimes more. It all depended on what he had to look at.

Trial Examiner: What was he doing at the plant?

The Witness: Most of the time he walked around and looked at the work or talked to someone.

Q. He talk to you about the work before you had that conversation with him in his office in December?

A. No.

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[332] Q. I am not talking about most of the time. I am talking about any time. Did you ever have to rip one out and sew another one in?

A. Well, if they told me to, I would.

Trial Examiner: Now did you? You are evading the question, ma'am. You were asked whether you ever had occasion to re-sew a lining into a garment.

The Witness: Yes. I understand that question.

Trial Examiner: That's a simple question. You did have occasion to do that.

The Witness: Yes.

Trial Examiner: Why don't you say so, instead of fencing with Mr. Thompson?

Q. (By Mr. Thompson) Did you ever rip out a lining and sew the same lining back in?

[333] A. No.

Q. You never did.

A. No.

Q. Your testimony is that the whole time you were working at this plant you never ripped out a lining and sewed the same one back in.

A. No.

Q. Did you ever discuss with your supervisor or any supervisor in this plant this problem of the fullness and the ripping out of linings and that type of thing?

A. I asked her—the only thing—

Q. Who is "her"?

A. My supervisor. Grace Higgins. I asked her would it be possible that they could cut the lining a little longer in order to give me plenty of fullness that they would like to have.

Q. What took place prior to your asking her that, that would occasion asking the question? Why did you ask her, in other words? What had you experienced that caused you to ask her to cut them a little longer? Were you having trouble with them?

A. If they wasn't long enough I couldn't have the fullness all the way, and if they had it an inch longer, I could have put the fullness all the way. That was the reason I asked.

Q. In other words, you were having trouble turning out the [334] right kind of job.

A. They accepted the job and said it was all right. "Let it go."

Q. You were turning out a proper garment.

A. Yes.

Q. Why did you ask to have it cut?

A. To make it easier on me.

Q. The garment was perfectly proper and satisfactory, the way you were turning it out. Your entire purpose was to make it easier.

A. Yes.

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[335] Trial Examiner: Why don't you say that? That's what Mr. Thompson is trying to find out.

Q. (By Mr. Thompson) Then you have had discussions with your supervisor on some subject; whether it was the work, or some other subject.

A. Yes. On social. Just ordinary talking.

Q. Your supervisor never made any mention about a union to you, though, did she?

A. No.

Q. And neither did Mr. "Murph", did he?

A. No.

[336] Q. And as far as you know there never was a union meeting while you worked in the Walton Manufacturing Company; isn't that true?

A. I was fired before they had a union meeting.

Q. Isn't that true? There was never a union meeting while you were working at Walton Manufacturing Company; isn't that true?

(Witness nodded affirmatively.)

Trial Examiner: Keep your voice up, please.

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[337] Q. Now it is true, Mrs. Yancey, that you didn't do any active solicitations for this union, did you?

A. No.

Q. You didn't go out and sign people up, like some of the other girls might have, did you?

A. No.

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[338] Q. Mrs. Yancey, do you ever recall having an argument with your supervisor, Mrs. Higgins, over anything?

A. Never had an argument. Had discussions about the work, as I have already told you.

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[341] PEARL COKER

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[343] Q. Did you do that same operation throughout your whole period of employment?

A. Yes.

Q. Were you on production rate; get paid by production, or by the hour?

A. When I first went there, by the hour.

Q. And after that?

A. They set up production on me.

Q. Did you have make-up pay?

A. Yes.

Q. Did the amount of your make-up pay stay the same, or approximately the same throughout your period of employment, or did it increase or decrease?

A. Well, it decreased. I mean, at the last it decreased, you know.

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]344] Q. Could you hear everything that was said?

A. No.

Q. Did you hear any of it?

A. Yes.

Q. Tell us what you remember of it. Pardon me. Can you place the date when this talk was made?

A. No, sir; I don't remember the date.

Q. Can you place either one of them?

A. No.

Q. Tell us what you remember about the first one.

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[355] Q. I believe you stated you didn't hear all that was said.

A. Not everything. Just now and then I could hear a few things.

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[356] Q. Isn't it true that you had make-up during most of the weeks that you worked at this company?

A. Probably—I had make-up every week, I guess.

Q. Are you familiar with the production of the other people who were doing the same identical operation that you were?

A. No.

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[358] VIOLET EWING

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[362] Q. Did you ever hear Morris Sharff make a speech in the plant?

A. One.

Q. Can you place when that was?

A. I would say it was the last of November. I mean—Yes.

Q. Did you hear everything that was said?

A. No.

Q. Do you remember everything that you heard?

[363] A. No; I don't remember everything.

Q. Do you remember any of it?

A. Just part of it.

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[368] Q. Were you told at that time why you were picked to be laid off?

A. Other than I didn't have any work.

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Q. After you went on that job and Elizabeth Johnson wasn't working on it, did you have any discussion with any supervisor about Elizabeth's work?

A. No. I had asked Jerry did she make production, and he had told me that she did.

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[375] Trial Examiner: Before Thanksgiving. And after you joined the union, did you solicit others to join the union?

The Witness: No.

Trial Examiner: Did not solicit anybody to join the union?

The Witness: No.

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[378] A. Well, as well as I remember, he said they were going to have to let us girls go because their production had been cut.

Q. Did he say anything about unions?

A. No. He didn't.

Q. Did anybody ask him about unions?

A. Someone asked him if we were being laid off because our names were out on the board. And they said that didn't have anything to do with it.

Q. Who said that didn't have anything to do with it?

A. Mr. Murph.

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[385] GRACE McCART

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[391] Q. I see. Now, were you paid on a production basis or by time?

A. I was paid by time for about two months.

Q. After that?

A. I was on a production basis.

Q. Did you have makeup any after you were put on production?

A. At first.

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[396] Q. (By Mr. Joy) Do you remember anything else that was said at that time?

A. He told me that they may have work for me later up at the pants plant, and he called Mr. "Murph" into the office and talked with him and I waited outside, and when I went back in he said that they didn't have anything down in the coat department for me. That they may have later in the pants department. And for me to check with Mr. Hughley up at the pants department.

Q. Did you do so?

A. Yes, sir.

Q. Did you get work there?

A. No, sir.

Q. Did you ever return to work at Walton Manufacturing?

A. Yes.

Q. When?

A. March 3, 1958.

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[399] Q. (By Trial Examiner) Did you discuss with him union at all?

A. No, sir.

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[401] Q. (By Mr. Thompson) And during the course of your employment, except for the conversation that you had with Morris at the time you were discharged, none of the other people in the plant ever said anything to you about union, did they—

A. Yes.

Q. (Continuing) —none of the management, did they?

A. No. None of the management.

Q. Your supervisor, or Mr. "Murph" never said anything to you about the union, did they?

A. No, sir.

Q. You are presently working at the Walton Manufacturing Company; is that correct?

A. Yes, sir.

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[403] *Further Cross-Examination.*

Q. (By Mr. Thompson) Mrs. McCart, these weren't new machines, were they?

A. Yes. They were new machines.

Q. They weren't old, worn out machines?

A. No.

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BONNIE HAMILTON

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[409] Trial Examiner: Wouldn't have what?

The Witness: Wouldn't have him.

Trial Examiner: Wouldn't have Sharff?

The Witness: Sharff; that's right.

Q. (By Mr. Joy) Was Arthur Sharff present at that time?

A. Yes.

Q. Was his father; Mr. Harry Sharff?

A. I believe he was.

Q. Will you tell us what you can remember about the second speech?

A. Well, in the second speech it was something similar to the first. That he was acting as a friend. And he was using a microphone and recorded the speech.

[410] Q. Was that true just of the second one?

A. He also used it on the first.

Q. Was Arthur Sharff there during the second speech?

A. Yes.

Q. Was his father there?

A. I don't remember.

Q. Did the Company ever have a party at the plant for its employees?

A. Yes, sir.

Q. When was that?

A. It was on Christmas Eve.

Q. Who was present at that?

A. The coat and the pants department was present.

Q. Will you tell us roughly what happened there? I mean, were there gifts given? A Christmas tree, or anything of that sort?

A. Yes. We had a big Christmas tree, and refreshments for the plant, and also give the employees a ham.

Trial Examiner: Was it a big ham? I have heard a lot about these hams. Was it a big ham?

The Witness: Weighed about 10 or 12 pounds, I believe.

Trial Examiner: All right.

Q. (By Mr. Joy) Was there any speech made at the party?

A. Yes.

Q. Who made that?

A. Arthur Sharff.

[411] Q. And what was told you during that speech?

A. He told us work had been slack but that after Christmas [illegible] could be begging to be off a day.

Q. Do [illegible] recall anything else in that speech?

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[415] I went in the office and there were already several girls in there, and there were more that come in after I did. And "Murph" and Arthur and Morris were all in there, and "Murph" said he had a speech to make. That it was short and not so sweet. That we were going to be laid off.

Q. Did he say why?

A. He said due to circumstances in the plant, and lack of work.

Q. Did he say what the circumstances in the plant were?

A. No; he did not.

Q. Was anything said while you were in there at that time about the union, or about the letter from the union?

A. Yes. There were several of us girls asked him if our name being on the letter had anything to do with our being laid off, and we were told that it had not.

Q. Who gave that answer?

A. Morris.

Q. Was there any discussion about why individual employees were picked out to be laid off?

A. Yes.

Q. Will you tell all that you can remember of it?

A. We asked if our seniority meant anything, and at first [416] "Murph" said it did. And I told him in that case I was higher than Lucille Yancey. He said well, they were picking the most qualified for the job.

Mr. Joy: May I see General Counsel's Exhibit 7?

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[421] Q. (By Mr. Thompson) Mrs. Hamilton, how much time during your employment at Walton Manufacturing Company did you spend on bar-tacking?

A. Just occasionally. Whenever they needed someone, and I didn't have any work to do.

Q. It wasn't much time, though, was it?

A. No.

Q. You didn't spend—what would you say? Just a few days doing that type thing?

A. I couldn't say exactly, but it wasn't long.

Q. Would the same be true of side-seaming?

A. I did more of the side-seaming than I did of bar-tacking.

Q. But you didn't spend the major portion of your time doing that, did you?

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[426] Q. Can you tell us at this time whether all except one of the names on that letter had check marks beside it—beside them?

A. Well, to the best of my knowledge there were two of the girls—wait just a minute. There was one of the girls was laid off. Her name was on the letter. There was one of them absent.

Q. Do you recall that name?

A. Lela Beaver. She was already laid off.

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[431] Q. How many people were at the meeting that was held at Mrs. Ewing's home?

A. That I don't know.

Q. You were there, weren't you?

A. I was there.

Q. Tell us who else was there.

Mr. Sheinkman: I object to the question.

Trial Examiner: I sustain the objection.

Tell us how many people were there.

The Witness: There must have been around eighteen.

Trial Examiner: How many people were at the meeting at your house?

The Witness: Around thirteen.

Trial Examiner: How is it you were able to state how many people were at these meetings and were unable to answer that same question when it was asked you by Mr. Thompson?

The Witness: Well, the approximate number—I could guess at it. But to be sure—I wouldn't know.

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[432] MRS. IDA HARPER

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[440] Q. Did he tell you what those advantages were?

A. If he did, I didn't hear him.

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[443] Trial Examiner: And which name had a line along side of it?

The Witness: Jeanette Beaver.

Q. (By Mr. Joy) Will you tell us what occurred on the day that you were laid off?

A. Well, Myrtle came to my machine—

Q. Myrtle who?

A. Ewing. It was about five or maybe ten til five, and told me [444] that Morris wanted to see me in the office. So when I went in there was a bunch of girls lined up in the hall that went into different offices. And after we all got in there we went into the main office and all the office girls left. And Morris and Arthur and Murph were in there. And Murph told us that he was going to lay us off because of lack of work. And some of the girls asked him was it temporary or permanent. And he said first it was temporary and then he said it was permanent.

And then some of them asked the reason we was being laid off was because of our names on that letter. And he said "No".

Q. Who said "no"?

A. I don't remember if it was Morris or Murph.

Q. All right. Have you been called back to work since then?

A. No, sir.

Mr. Joy: No further questions.

Further Direct Examination.

Q. (By Mr. Sheinkman) At that Christmas party, do you remember whether any speeches were made?

A. There was one made.

Q. Do you remember who made the speech?

A. Arthur.

Q. Do you remember what he said?

A. I couldn't hear him.

Q. Couldn't hear him?

A. Couldn't hear him.

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[450] Q. What exactly is repair work?

A. Well, it is something that is done that sometimes the one that sews it either, you know, don't sew it right, or maybe it is not cut right, or something like that, and it has to be took out.

Q. Then what it is, it is work that is not satisfactory for some reason or other and has to be re-done. Isn't that about what it amounts to?

A. Yes, sir.

Q. While you were working at the Walton Manufacturing Company did you have any repair work?

[451] A. Yes, sir.

Q. Did you have a substantial amount of repair work, or just a little bit of repair work, or what was your general experience there?

A. Well, especially white coats. We had a lot of them. Because "Murph" said when they was pressed, that the outside of the coat would draw up and that would make the lining longer than the coat. So we had a lot of them.

Q. I wonder if you would answer my question. My question is whether you had a lot of repair work or whether you had just a little bit of repair work during the time you worked there? Without regard to what Mr. "Murph" might have said.

A. Well, it just varied. Some days I would have maybe a good many, and the next day maybe I wouldn't have over five or six.

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[452] Q. Let me, in other words, refer to your own work. Let's disregard what other people in the factory—what their experience might have been. With respect to the work that you did. Throughout the time that you were working there, did you have much work that had to be re-done that you could classify as repair work?

A. Well, on some of them I did.

Q. Some of what?

A. Different kind of material. There is different kind of materials. I had a good many, maybe, on gabar-

dine. It was hard to get the machine adjusted right. I had a lot of them.

Trial Examiner: That is work that you did originally, that had to be re-done.

The Witness: Yes.

Q. (By Mr. Thompson) Who did this repair work?

A. I did.

Q. It is true, isn't it, throughout the time you worked there you constantly had repair work?

A. Yes, sir.

* * * * * * *

[453] Q. Did you have trouble with both of those machines?

A. Yes, sir.

Q. Did that trouble continue throughout the time you were employed there?

A. Yes, sir.

Q. Was there ever any time you had more than one day without having trouble with those machines?

A. Some days I could maybe sew all day and not have trouble and then maybe a half a day, or an hour or two.

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[454] Q. Now did I understand you to testify that the time you were working for this company, you were paid on an hourly basis?

A. Yes, sir.

Q. The entire time you were working there.

A. Yes, sir.

Q. Did you ever have any make-up pay while you were working there?

A. Yes, sir.

Q. Did you have make-up pay the whole time you were working there; every week?

A. Yes, sir.

Q. Will you explain to me how you can have make-up pay and get paid by the hour?

A. They never did tell me what my production was on that job.

Q. You received the minimum rate per hour.

A. Yes.

Q. Is that what you are testifying?

A. Yes.

Q. Actually, you were on a piece rate, weren't you?

A. I thought I was paid by the hour, because I just got a dollar an hour. And each week I got the same amount, unless [455] I had overtime.

Q. And the reason for that was you never made your production; isn't it?

A. I guess so, but they never did set it; or never did tell me what it was.

Q. In the course of your work while you were turning out these garments, did you not work as hard as you would have worked if you had known what your quota was? Is that what you are testifying?

A. No. I worked—I tried to do as many as I could every hour, as long as I had the work and the machine didn't give me trouble. Maybe one hour I would get 25 or 30. And if it didn't break down, I might do 75 or 80.

Q. It wouldn't make any difference after you had done what your production quota was, as to how much you turned out, would it?

A. I don't guess so.

Q. I mean, that doesn't have any bearing on why you were paid by the hour, or by the piece?

Trial Examiner: What doesn't have any bearing?

Mr. Thompson: She testified no production quota was ever brought to her attention, and for that reason she was paid by the hour. I am trying to find out the logic behind the statement.

* * * * * * *

[457] Q. Were you aware that you had make-up pay every week?

A. Yes, sir.

Q. Now did I understand you to testify that the job which you were performing at this plant was more complicated than the job that Charlotte Findley was performing?

A. Yes, sir.

Q. In what way was it more complicated?

A. Well, I had to change thread on the different colored coats, and I also had to adjust the machines to the different kind of materials.

Q. Were those jobs identical, with the exception of the two things you had to do that she didn't have to do?

A. Sir?

Q. Were those two operations identical, other than the two things you just mentioned that you did that she didn't have to do?

A. Yes, sir.

[458] Q. I didn't understand you.

A. Yes, sir.

Q. Were you sewing the same portion of the garment?

A. Yes, sir. Sewing the lining to the coat.

Q. Did you sew a different part of the lining than she did?

A. No, sir. I sewed down below. She basted. and I sewed after she basted. The stitching went between the lining and the coat.

* * * * * * *

Q. Did any of your supervisors, or anyone else connected with management, ever speak to you about unions?

A. No, sir.

Q. Between the time that this letter was brought to your attention by Mr. Morris Sharff, which contains your name, and the time that you were laid off on January 31st, was any mention made to you by anybody in management concerning unions?

A. No, sir.

* * * * * * *

[459] Q. Now, Mrs. Hamilton—I mean Mrs. Harper, isn't it true that at the time you were working at this plant that you spent a portion of your time while you were supposed to be working or while you were working, perhaps, talking and laughing and generally staying away from the work that you were supposed to be doing?

A. Well now, when I wouldn't have anything to do, or if I was just about caught up, Myrtle would tell me to take my [460] time, or either go to the bathroom, or do something. You know, she didn't have anything for me to do.

Trial Examiner: You are talking about Myrtle Ewing.

The Witness: Yes.

Q. (By Mr. Thompson) Now during those times, is that when you engaged in the activities that I just now described?

A. Sir?

Q. Are those the times that you engaged in the activities I have just now described?

A. Yes, sir.

Q. You didn't engage in them at any other time.

A. Not as I can recollect.

Q. It's possible your recollection might have failed you with respect to that?

A. I just don't know. I don't remember.

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[462] Trial Examiner: Continue.

Q. (By Mr. Sheinkman) Was it often that you didn't have much work to do?

A. Yes, sir. Sometimes it would be two or three days a week, I didn't have much work to do.

Q. You wouldn't have a full eight hours work, is that right?

[463] A. That's right.

Mr. Sheinkman: No further questions.

Examination.

Q. (By Trial Examiner) What was the length of time, on the average, when you didn't have much work to do when you were having this free time? How much of the day?

A. Well, maybe it would be two or three hours. Maybe sometimes an hour.

Q. And how often did that occur?

A. Sometimes two or three days a week.

Q. Now did you—you knew that you were receiving make-up pay every week; is that correct?

A. Yes, sir.

Q. Your check so indicated.

A. Yes, sir.

Q. Did you ever take the trouble to ask anybody what that meant?

A. I asked Myrtle.

Q. And what did she tell you?

A. I asked her why did I have make-up and they hadn't set my production, and she said she didn't know.

Q. You understood, then, that make-up pay indicated no production had been set for you.

A. I thought when you had make-up, it had been set.

Q. But you just didn't know what the production was?

[464] A. Yes, sir.

Q. Do you know Geneva Harris?

A. Yes, sir.

Q. What kind of work was she doing?

A. When I was working?

Q. Yes. When you were working.

A. I just don't remember what she was doing.

Q. All right. Did you ever have any arguments with Mrs. Ewing?

A. No, sir.

Q. Did she ever tell you that your work attitude was poor?

A. No, sir.

Q. How often were you absent from the plant?

A. I really don't know.

Q. Were you absent frequently?

A. It was only when my baby was sick.

Q. And how often did that occur?

A. Well, along around Christmas, and right after Christmas, he was sick a lot.

Q. I don't know what you mean by "a lot." Would you explain that to me?

A. Some days he would be sick two or three days a week, but I don't think I was out over one day at a time, two or three times.

* * * * * * *

[465] Q. Were you told that there wasn't enough work for you to do?

A. Yes, sir.

Q. When were you told that?

A. I don't remember exactly when it was.

Q. How long before you were laid off?

A. Well, it was all the time I started to work. I didn't hardly ever have regular work.

Q. Just before you were laid off, did you suddenly increase your production?

A. I just don't remember whether it was just before I was laid off or not.

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[469] NELLIE WOOD

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[462] Q. What was said there?

A. I don't remember. They just told us they was laying us off.

Q. Were you told then why you were picked to be laid off?

A. That he didn't have enough to fill it—to give us all work. That he had to cut production.

Q. Did he say why you, particularly, were picked, rather than somebody else?

A. I didn't ask; no, sir.

[483] Q. Did they tell you?

A. No, sir.

* * * * * * *

[487] Q. That's what your main job was, and then you did other things when there wasn't any overflow.

A. Yes, sir.

Q. There were times that you worked in the pants plant. I believe you stated you made a request of your supervisor that you be allowed to go over there and work.

A. Yes, sir.

Q. That was because there wasn't enough work at the coat factory.

A. Yes, sir.

Q. To keep you busy and make enough money, so you asked to be permitted to go over there and work.

A. Yes, sir.

* * * * * * *

[488] Q. They just told you what was going to be in it, and asked if you would put your name on it; is that right?

A. Yes, sir.

Q. Did you sign anything giving them authority to put your name on it?

A. I signed that to my sorrow.

[489] Q. It wasn't that letter that you saw later in Morris' hand?

A. No, sir. I signed just a piece of paper. Just the names on it.

Q. That piece of paper was just authorizing them to put your name on it.

A. Yes, sir.

Q. Didn't they tell you if you would sign that, that you couldn't be fired?

A. Yes, sir.

Trial Examiner: Is that why you were sorry?

The Witness: No. I was sorry from the start. I didn't want to hurt my employer. I liked him. And I am still not hurt with him for nothing he done.

Q. (By Mr. Thompson) At the time that you were up at the pants plant to talk to Mrs. Spradling I believe you stated you had a conversation with Mr. Hughley?

A. I did.

Q. Nothing at that time was said at that time about the union either way, was there?

A. No, sir. Not between me and him.

Q. Do you recall when it was that you went down to talk to Morris about putting—being put back to work?

A. It was on a Friday, I believe. I don't remember the exact date. But it was somewhere around the middle of June.

Q. Before you went back to work?

[490] A. Yes, sir.

Q. Did you actually talk to Mr. Joy at that time?

A. Yes, sir.

Q. That's Mr. Joy who is here in the courtroom.

A. Yes, sir.

Q. And asked you the questions a while ago.

A. Yes, sir.

Q. And didn't you tell him at that time that you didn't want to press your case?

A. Yes, sir.

Q. That you wanted to get out of it?

A. Yes, sir.

Mr. Thompson: No further questions.

Mr. Joy: I have none.

Re-Direct Examination.

Q. (By Mr. Sheinkman) When you went to see Mr. Morris Sharff in June did you say that you were sorry that you signed the card with the Union?

A. Yes, sir; I was sorry. I had went to Mrs. Sarah Broome before then and asked to come out of it.

Trial Examiner: When was that?

The Witness: I don't remember, but it was the Thursday the snow was on the ground.

Trial Examiner: That was after you were laid off?

The Witness: Yes, sir. I wasn't hurt at Mr. Morris the [491] day I was laid off. I was kind of hurt with them because I needed the work and I went and tried to find them that afternoon, and I couldn't find them Saturday—

Q. (By Trial Examiner) Who did you go to find?

A. Any of the union organizers. And I didn't find them. They come to my house Saturday, now—

Q. (By Mr. Sheinkman) When you went back in June you told Morris you were sorry you signed the card?

A. Yes, sir.

Q. And you didn't want to hurt him.

A. Yes, sir.

Q. Did you tell him you wanted to pull out of the case?

A. Yes, sir—I told Sarah Broome that.

Mr. Thompson: I object to any further leading of this witness. He has led the last four questions.

Trial Examiner: Yes; don't lead the witness.

Q. (By Mr. Sheinkman) Did you say anything to Morris when you spoke to him the middle of June?

A. I told him I had asked to come out of it.

Q. Did you say anything to him about the Board case; about the Labor Board case?

A. He said I had a complaint against them, and I told Mr. Joy when I come out there that I had done come out of it.

Q. Did he say anything to you about saying something to Mr. Joy about it?

[492] A. He told me to wait and talk to Mr. Joy when he got there.

Q. When did he say you were re-ihired? Before you told him you were pulling out of the union, or after?

A. After I went back the Saturday before the 23rd.

Q. Did he tell you you had a job?

A. No, sir.

Q. When did he tell you you had a job and could come back to work?

A. I went back the Saturday before the 23rd on Monday.

Q. You saw him in his office; is that right?

A. Yes, sir.

Q. And you told him, you stated on cross-examination—

Mr. Thompson: I object again to the leading.

Trial Examiner: The witness didn't understand the question. He is trying to have the witness understand the question.

Q. (By Mr. Sheinkman) You told him you were sorry you pulled out of the Union.

A. No. I wasn't sorry I pulled out of the Union.

Q. You weren't sorry.

A. No, sir.

Q. You are sorry you signed the card.

A. Yes, sir; I am sorry.

Q. For the Union.

A. Yes, sir. I am sorry.

Q. When did you ask him for the job; before or after you [493] said this?

A. After, I believe.

Trial Examiner: Why are you sorry you signed the card for the Union?

The Witness: Because they told me I couldn't lose my job, and I was afraid I might have to work for Morris again some day—

Trial Examiner: And you thought if you belonged to the Union, you couldn t work for him; is that right?

The Witness: I don't know, now.

Trial Examiner: I want to know what you felt.

The Witness: Well, I felt like they was doing him dirty.

Trial Examiner: You felt like if you belonged to the Union, you couldn't work there?

The Witness: Not then.

Mr. Thompson: I object to the Examiner's question.

Trial Examiner: Overruled. You may continue.

Q. (By Mr. Sheinkman) When did Morris tell you you had a job? After you saw Mr. Joy or before you saw Mr. Joy?

A. It was the 21st of June, I believe he told me I had the job.

Q. Did you see Mr. Joy that day?

A. No, sir. I went back to see Morris on Saturday before I went to work there Monday, the 23rd.

Q. Wasn't that the day he told you Mr. Joy was coming?

[494] A. No, sir.

Q. When did he tell you Mr. Joy was coming?

A. The day I saw Mr. Joy. I believe it was around the 13th, I won't be for sure.

Q. Did you see Mr. Morris first, that time?

A. Yes, sir.

Q. Did you talk—did you discuss the union that time?

A. Nothing only what I told you.

Q. When did he tell you you had a job; which day; the 13th or 21st?

A. The 21st.

Q. After you had spoken to Mr. Joy?

A. Yes, sir.

Q. Did he tell you to say anything to Mr. Joy at that time?

A. No. He didn't tell me to say anything.

Q. Did you report back to him you had spoken to Mr. Joy?

A. He was in Mr. Joy's presence when I talked to him.

Q. And what did you tell Mr. Joy at that time?

A. I told him I had tried to get out of the Union and I didn't want to press no charges.

Trial Examiner: Was that after—Was it after that you were told you would get a job back?

The Witness: Yes, sir.

Mr. Sheinkman: No further questions.

Re-Cross-Examination.

[495] Q. (By Mr. Thompson) Mrs. Wood, Morris didn't tell you he would give you a job if you would pull out of the Union, did he?

A. No, sir; he did not.

Q. And your getting a job, as far as you know, didn't have anything to do with your pulling out of the Union; did it?

A. No, sir.

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[497] MARY ALICE McWATERS

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[507] Q. Was anyone else present besides the names who are on the letter?

A. I don't recall whether there was, or not.

Trial Examiner: The ones whose names were on the letter, were they all present at the time?

The Witness: Yes, sir; they was.

Trial Examiner: And did they all authorize their names to be put on the letter?

The Witness: Yes, sir; they did.

Trial Examiner: And you heard that?

The Witness: Yes, sir; I did.

* * * * * * *

[511] Q. Now, Mrs. McWaters, referring to a letter which you've been shown and which has been called General Counsel's Exhibit 6 A and B—the letter, I think, is B, which is a letter and an envelope—

Trial Examiner: The letter is 6 A, the envelope is B.

Q. Yes, sir. Nobody from the Company told you to sign that letter, did they? No official of the company, no management personnel connected with the company told you to sign that [512] letter, did they?

A. No, sir.

Q. As far as you know, until that letter was brought out in Court here, nobody—the management of this company never knew anything about it, did they?

A. No, sir.

Mr. Sheinkman: I object to the form of the question. Before I raise my objection—I thought I heard something and I would like to get a rephrasing of the question.

Mr. Thompson: Would you read that question back, please?

(Last question read back by reporter.)

Trial Examiner: Rephrase the question, please.

Q. Mrs. McWaters, as far as you know, no official, superintendent or member of the supervisory staff of the Walton Manufacturing Company was aware of this letter

which is General Counsel's Exhibit 6 A until it was brought out in the court room today. Is that correct?

A. Yes, sir. That is correct.

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[516] Trial Examiner: Now, tell us all the reasons.

The Witness: Another reason I didn't think that that was what I wanted. It was just a disturbance and that wasn't what [517] I wanted.

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[518] Trial Examiner: I withdraw the last question.

Did you ever see a letter on the bulletin board similar to General Counsel's Exhibit 9?

The Witness: Well, if it was there, I didn't read it.

Trial Examiner: Well, was there any discussion of this letter, General Counsel's Exhibit 9, in connection with the preparation and signature of General Counsel's Exhibit 6 A? This letter. In other words, I don't know whether you understood me. In the preparation of this letter and your decision to sign this letter, to authorize your signature to this letter, was there a discussion by any other girls of this notice?

The Witness: That could have been what brought it about. But I didn't read that letter.

Trial Examiner: Now, was it discussed. That's what I'm asking.

The Witness: No. Not with me.

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[519] NELLIE HOOD

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[523] Q. Will you tell us as best you can what you remember?

A. Well he said that he was speaking for his father and brother and not for himself. And that if the union came in he would have no part of it. That he did not have any stock in that company and he would not have any if the union came in.

Q. Remember any more?

A. No, sir. I don't remember.

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[533] Q. You don't maintain that your leaving had anything to do with the union—your second leaving. Is that correct?

A. No, it didn't.

Q. Mrs. Hood, the second time that Mr. Carter discussed—made the statement to you that you referred to, when he said you had told him a story. What did you do after he said that?

A. I laughed and walked off.

Q. You just sort of brushed it aside and walked on away. You didn't pay any attention to him?

A. No.

[534] Trial Examiner: You mean no; you didn't pay any attention.

The Witness: To him saying it; no.

Q. (By Mr. Thompson) At the time of the lay-off the question was raised as to whether it was because of the letter out on the bulletin board, or the union, wasn't it?

A. I believe it was.

Q. And what was said?

A. Well, they said the letter out on the board had nothing to do with us being laid off.

Q. The letter that you are referring to is General Counsel's Exhibit 5 that was shown to you a few minutes ago, with a list of people's names on it.

A. Yes.

Q. How many occasions do you recall Mr. Carter making reference to Lucille Yancey's work?

A. There were quite a few times.

Q. Will you give me the date of one of them?

A. No; I cannot.

Q. Can you give me the amount of—the month of one of them?

A. No; I cannot.

Q. Would you give me your best estimate as to how many times?

Trial Examiner: Mr. Sheinkman, I don't want you to do [535] that again. No signals to any of the witnesses, no matter how well intentioned they are. I am sure you didn't intend to do anything improper. I will run this hearing and if this witness isn't talking is talking about, or not talking about matter she is not required to talk about, I will be the one to decide that.

Q. (By Mr. Thompson) Would you give me your best estimate, please, as to how many times you heard him say that?

A. I don't know how many times, or near how many times, but it was the time I was working there, on and off the whole time I was working there.

Q. The whole time you were working there. And he never said anything about Bonnie Hamilton's work, did he?

A. No, sir.

Q. But he was always talking about Lucille Yancey's work.

A. Yes; he was.

Q. Is that your testimony?

A. Yes; he was.

Q. Have you done work similar since you came back there that you did before you were laid off?

A. Yes.

Q. Have you come in contact with the same operators that you came in contact with before?

A. Yes.

Q. Is the Lucille Yancey you are referring to still there?

[536] A. Yes; she is.

Q. Who else is there doing that type work?

A. No one but her. Except when they get behind. Lonabelle Camp helps out.

Q. And Lucille Yancey is doing the work that she and Bonnie Hamilton were both doing before, except when they get behind; is that right?

A. That's right.

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[538] Q. (By Mr. Thompson) Mrs. Hood, it's your testimony, is it [539] not, that Lucille Yancey is performing the operation, for whatever quantity is coming through the plant, that she and Bonnie Hamilton performed prior to the lay-off, except when they get behind; isn't that true?

A. I would say so; yes.

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RUTH BROOKS.

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

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[541] Q. (By Mr. Joy)

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[542] And then Morris asked me how would I like to go up to the pants plant to work.

Q. What did you say?

A. I told him that I didn't know. I hadn't thought about it.

Q. Now when did you go to work for Loganville Pants Company and how did that happen?

A. Well, after I told him that I hadn't thought about going up there to work, he said, "Suppose you report up there to work in the morning," and I didn't say that I would or I wouldn't. I turned and walked off. And I did not go the next [543] morning.

Q. Go ahead and tell what happened?

A Up in the day I called Mr. Hughley and I asked him what it was all about. That they had told me to come up there and work when they had told us that no one would be transferred to the pants plant whatsoever.

And he said, "I wish you would come down here. I would like to talk to you."

Q. When you say you called Mr. Hughley, where was he?

A. He was in the pants shop.

Trial Examiner: Where were you?

The Witness: I was at home.

Trial Examiner: You mean you didn't go to work that day?

The Witness: No; I didn't.

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[559] Q. (By Mr. Joy) Mrs. Brooks * * * [561] Was that a very vigorous discussion?

A. Well, I would think so.

Q. Was there loud talk?

A. Yes.

Q. Did it continue for any length of time or was it for just a moment?

A. Just a few minutes.

Q. What brought it to an end?

A. I believe Mr. Hughley walked in the door.

Trial Examiner: Did you see him?

The Witness: Yes, I saw him.

Trial Examiner: Then you don't believe it, you know it.

Q. How long after that was it that he made his statement that you have already testified to about having heard enough union talk?

A. When the bell rung for us to go back to work. After everyone had started he had the machines cut off and then he told us that he wanted us to know that he had heard enough about the union. That he was tired of it and that he was working trying to get contracts for us to have work. And if that's the way we were going to do, he was through with us.

Q. Now, how long between the time he came in while you were discussing—talking with Sarah Irwin before he made that statement?

[562] A. Just a few minutes because we all just turned and went to our machines.

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[578] Q. (By Mr. Thompson) Mrs. Brooks, at the time this Christmas party was held, you were employed by the Loganville Pants Company, were you not?

A. Yes.

Q. Where were you prior to the commencement of the party?

A. I was at the Loganville Pants Shop.

Q. Now, the party for the Loganville people, the Loganville Pants Company people, started out at the Loganville Pant, did it not?

A. Yes, we had our own Christmas tree.

Q. And you had your own drawing for presents?

A. Yes.

Q. And it was just the people that worked for the pants company, is that right?

A. Yes.

Q. And did you also have your own refreshments?

[579] A. We were served punch.

Q. All right. Now, after that, you went on down to the Walton Manufacturing Company Plant?

A. Yes.

Q. And you joined the party that was going on there?

A. Yes.

Q. And that's where you got your ham?

A. Yes.

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[582] Q. Now, when you were working down at the Walton Manufacturing Company before you went up to the pants plant, did you ever have any makeup?

A. I did.

Q. Did you have a good bit of makeup?

A. Yes.

Q. Did you have difficulty doing the work that you were doing down there?

[583] A. At times.

Q. Did anybody ever say anything to you about it?

A. No.

Q. Nobody ever said anything to you about it?

A. No.

Q. Did you ever say anything to anyone else about it?

A. Yes.

Q. To whom did you say something?

A. I talked to my supervisor about it.

Q. Who was your supervisor?

A. Grace Higgins.

Q. And what did you tell her?

A. I told her about the different places that I had worked before and that I had always made production everywhere I worked until I came there. And there was something wrong somewhere why I couldn't make it.

Q. Now, didn't you also talk to Morris Sharff about that?

A. Yes, I talked to Grace another time and she said, "I can't understand why you can't make it.' They told me this was a good paying job.

Q. And then you talked to Morris Sharff about it, too, didn't you?

A. Yes.

Q. What did he say?

A. I went in to see him one morning and he was back there [584] at my machine and we talked about my operation and I told him that I wasn't satisfied with it. And he said, "Frankly, I'm not either.

Q. Now, when you were told to go up to the other plant and report—you remember testifying to that?

A. Yes.

Q. Why didn't you go up there the next day?

A. Because I was with Lucille Yancey the morning that she asked Arthur Sharff about any of the employees being transferred to the pants department. And he said that no one would be transferred whatsoever. And after I had talked with him about—he told me that I either—I talked to Morris, and he told me that I either had to get my production or else. I thought when he told me to go to the pants shop that it was a means of shoving me out of the plant.

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[586] ROSE L. TRIBBLE.

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[588] Q. (By Mr. Thompson) Mrs. Tribble * * * At the time you were working at Walton Manufacturing Company nobody ever said anything to you—none of the man-

agement people ever said anything to you about a union, did they?

A. No, sir.

Q. And you never heard Morris Sharff or Arthur Sharff say anything about closing the plant if a union came in, did you?

A. No, sir.

Q. But you did hear the speeches Morris Sharff made.

A. I attended the speeches; yes. I was there.

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[592] RUTH BROOKS.

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[595] HESTER LOU McCART.

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[600] Q. (By Mr. Thompson) About how much were you making per hour, or per week?

A. When I quit?

Q. Yes. When you quit.

A. Well, I had made $65 a week. If I had regular work.

Q. How much did you make during an average week during this period of a little over a year that you are speaking of; somewhere between 50 and $60?

A. I would say $50 on an average for the whole year.

Trial Examiner: How much did you make around January, 1958?

The Witness: I guess I was making good, at that time.

Trial Examiner: Around the time this lay-off took place. How much were you making at that time?

The Witness: $1.40 an hour. I believe it was, when they [601] took this girl—

Trial Examiner: Talk louder.

The Witness: At the time when Pearl was laid off, just before she was laid off, they put me to anchoring the collar and sewing the lining to the back of the coat, and Mary Alice Winslett finished the collar down and they give me my average of $1.40 an hour then.

Q. (By Mr. Thompson) Was Mary Lou Partain making the same production you were?

A. No. Mary Lou was a very slow operator.

Q. Was Pearl Coker making the same production you were?

A. No. She and Mary Lou were practically on the same basis, I think.

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[603] Q. (By Trial Examiner) * * * How long after the lay-off?

A. I don't know that. But I do know she went to Atlanta and went to work for some linen supply company.

Q. A week, a month, two months? Approximately.

A. Approximately? She went to Atlanta and got a job.

Q. You mean shortly after the lay-off?

A. It wasn't a lay-off. It was just a slack time. She was just off.

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[605] RUNELLE DANIEL.

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[606] Q. Do you remember everything that was said by Mr. Sharff?

A. No; I am afraid not.

Q. Do you remember anything that was said?

A. Well, he told the ladies, and all, that the union was trying to come in, and they could join if they wanted to, and make up their own mind. He couldn't do either one; not to tell them to join, or not. In a very nice way.

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[608] LELA BEAVER.

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[625] Q. Those girls that you saw up there who were regularly employed at the Walton Manufacturing Company Coat Plant, were only there just a few occasions, weren't they?

A. That's right.

Q. And they didn't come there and work regularly, did they?

A. No, sir.

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[626] Q. Did Mr. Hughley ever say anything to you individually about unions?

A. No, he didn't.

Trial Examiner: The only time Mr. Hughley talked to you about unions was when he spoke to everybody at the same time?

The Witness: That's right.

Q. And Edna Atha never said anything to you individually about unions, did she?

A. Well, I asked her one day, "Reckon we'll ever get better work, more than two or three days a week." She said we might if the union would leave us alone. But she never said anything else other than that.

Trial Examiner: Was that two or three days work a week?

The Witness: Yes.

Trial Examiner: Is that all you were getting?

The Witness: Three days, three and a half, sometimes four.

Trial Examiner: When was this?

The Witness: Well, it was December and January, the best I can remember.

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[631] Trial Examiner: It will be received.

(The document heretofore marked Respondents' Exhibit No. 2 for identification, was received in evidence.)

Trial Examiner: May I see it, please? (Document handed to Trial Examiner.)

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Q. (By Mr. Thompson) Mrs. Beaver, I call your attention again to page 3 of Respondents' Exhibit 2, the first sentence. I would like, if you will, please, ma'am, for you to read that sentence to yourself.

A. "Mr. Hughley never said anything to me individually about the union. Neither did Edna Atha."

Trial Examiner: Now do you have a question?

Mr. Thompson: This has been received, I believe, has it not?

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[642] NANCY WILLIAMS.

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Direct Examination.

Q. (By Mr. Joy) Mrs. Williams, did you ever work for Loganville Pants Company?

A. Yes, sir.

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[644] Q. Did you ever hear Mr. Hughley talk about the Union?

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Q. Will you tell what happened? What he said about it?

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A. He told us he would not have any union talk in the shop.

Q. (By Mr. Joy) Do you recall anything else he said at that same time?

A. He said that he was trying to get us more contracts, more work, and if we were not interested, he would not try.

Q. I see. Had anything happened just before Mr. Hughley made that statement that caused him to make it?

[645] A. Some of the girls had had a little misunderstanding and they did not go right to work at the time they should have, and he came in and the girls were arguing, and they were not at their machines.

Q. Now who were the ones arguing?

A. Ruth Brooks and Sarah Irwin.

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[646] Trial Examiner: Were they arguing about the union?

The Witness: Yes, sir.

Q. You may have already covered this. Was Mr. Hughley in the room during the time that any of the argument was going on?

A. He was not. He came in—

Q. He came in while the argument was going on? Will you speak please? The reporter can't record your nodding very well.

A. He came into the room during the argument.

* * * * * * *

[647] Q. I see. When was that, approximately?

A. Latter part of January.

Q. Will you tell what happened on that day?

A. Mr. Hughley told us at the plant that the plant would be closed. That was the last day.

Q. You say he told "us". You mean he was speaking to the entire group, or to a few individuals?

[648] A. To the plant.

Q. What else was said?

A. He said that some of the machines would be carried down to the new plant and that some of the girls would have jobs, but there would not be enough work for everyone. And when we out at five, I went and asked Mr. Hughley about my job because I was not to go down to the other plant. And he thought that there would be plenty of sergering for me in a few days.

Q. Did he give you any instructions or information about a blind for the work?

A. He said that we would be off from work one day. Some of the girls would go in the following day, and for the rest of us to check in a day or two. He was not sure what would be there for us.

Q. Did he tell you where to check or with whom to check?

A. He told us to go down to Walton to see Morris.

Q. Morris who?

A. Sharff.

* * * * * * *

[649] Q. (By Mr. Joy) * * * I see. And who did you talk to, if anyone, there at the Walton Plant?

A. I talked to Morris Sharff.

Q. What did he say about—

A. He told me that the work was not lined up and he was not sure whether there would be plenty of work for me and that he would let me know. He took my name, my telephone number and said that he would call me.

Q. Did he call you?

A. No, sir.

Q. Did you have any further discussion with him about it?

A. I went back at a later date and he said there was just not enough work.

Q. Can you place the approximate later date? About how long?

A. About a week.

Q. About a week after the first one?

A. Yes.

* * * * * * *

[651] Q. (By Mr. Thompson) * * * At the time Edna Atha made the statement which you have attributed to her, she didn't ask you whether you had joined the Union, or whether you had signed a card, did she?

A. No, sir.

Q. As far as you know she didn't ask anybody else whether they had signed a card.

A. No, sir.

Q. As a matter of fact you didn't overhear what she asked anybody else.

A. No, sir.

Q. Other than that one time Edna, nor Mr. Hughley, ever made any statement about unions, did they?

A. No, sir.

Q. At the time this argument took place, just before Mr. Hughley's little talk, the bell had rung?

A. Yes, sir.

[652] Q. While the argument was going on, and they continued the argument.

A. That's right.

Q. And Mr. Hughley walked in somewhere along about that time; is that right?

A. Yes, sir.

Q. This girl Sarah, who was one of the participants in the argument, was a pretty loud talker, wasn't she?

A. Yes, sir.

Q. And they were both talking pretty loud while this was going on?

A. Yes, sir.

Q. Do you recall the speech that Morris Sharff made at the pants plant?

A. Not any—No, sir. I recall the speech.

Q. You recall that he made a speech.

A. Yes, sir.

Q. And don't you recall that he made the statement that they were not going to close the plant?

A. Yes, sir.

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[654] PAULINE SPRATLIN.

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[657] A. Well, they just told us that they wasn't able to pay the expense there; that we were to be moved.

Q. Who told you that?

A. Well, Mr. Hughley.

Q. And when you went to Walton Manufacturing plant to work, did you make out a new application there?

A. No, sir.

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[658] BESSIE SATTERFIELD.

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[659] Q. Did you quit, or were you laid off?

A. I quit.

Q. Did you ever sign a card for the union which was attempting to organize employees?

A. Yes; I did.

Q. Did you ever attempt to withdraw from the Union?

A. Yes, sir.

Q. What method did you use for attempting to withdraw?

A. Well, me and five other ladies—

* * * * * * *

[660] A. (Continuing) Me, and five other ladies, got together and discussed that we wanted our name withdrawn from the card. So there was a notice up on the board and we got the address up there.

Trial Examiner: There was a notice up on the board to what effect?

The Witness: That said we could have our name withdrawn from the card if we wished to. To write to this place. And we did.

Mr. Joy: May I see General Counsel's Exhibit 9, please?

Q. (By Mr. Joy) I show you General Counsel's Exhibit 9, which is a copy of a letter. I ask you if that's the letter you refer to on the bulletin board.

A. Yes, sir; I believe so.

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[666] FLAUDIE ATHA.

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[668] Q. And will you tell the conversation, as best you can recall it, that took place?

[669] A. Well, I asked Morris if there was any chance of me coming back to work. And he said that he didn't know, that they didn't have anything for me to do. And told me to call back on Friday. That was January the 3rd.

Q. Did he say who to call?

A. Call him. Call Morris Sharff. I called back January the 3rd and talked to Morris again. He still said the work was slack, that they didn't have anything for me to do. But to keep in touch with him.

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[672] EVELYN HUDSON.

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[673] Trial Examiner: And then you worked on other jobs for about a month, is that right?

The Witness: Well, it was between two weeks—two or three weeks—or probably a month. I can't say for sure.

Trial Examiner: All the rest of the time y u were working on this job of tacking and turning sleeves?

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[678] And Murphy told us that at that particular time, that [679] we was going to have to be laid off due to the lack of work. And I asked Morris about my job—why I was being laid off. And asked him if it was due to the joining the union. He says, "No, the union has nothing to do with it." He says, "The thing of it is, I don't—we don't have enough work—I can't get enough work to keep you busy all the time." And says, "We are going to have to let you go." I said, "Well, Morris, I am the only one that does my job. Who is going to do it after I leave?" And he said, "That job is very simple and very easy and will be—anybody can do it. And it will be divided among the other four sleeve girls." Which I found out later, only Bonnie Thompson and Grace Barnes has been doing my job.

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[681] Q. In your opinion, which of the operations is the most simple?

A. Sewing wiggin.

Q. Why? Why do you reach that conclusion?

A. Well, it's just one straight seam, just about that long.

Q. That doesn't show up in the record.

A. About four inches—four or five, maybe six inches long. And the material is laid flat down on top of the wiggin.

Q. All right. And how does that compare with the operations that you were doing as a regular thing?

A. Of tacking and turning sleeves?

Q. Yes.

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[683] Trial Examiner: And how about your job in respect of the work of Regina Hall?

The Witness: Well, I never was able to do much with that job.

Trial Examiner: You mean Regina Hall's job was more complicated than yours?

The Witness: Well, it wasn't so much more complicated, but still, I just couldn't do her job like I could do mine.

Trial Examiner: And have you tried her job?

The Witness: I have tried her job.

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[685] Q. Now, after you went back to work, did you work only on the making of sleeves?

A. That is right.

Q. And are you still employed?

A. No, I'm not.

Q. What happened?

A. Well, I think it was the 18th of August, if I am not mistaken, that they called me in the office and told me that morning that they were going to have to let me go because I could not make production on making the sleeves. And I told Murphy and Grace Higgins—in fact I told Grace Higgins before Murphy, that I had tried—that she knew I had tried to make sleeves before I was laid off in January and I could not make them.

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[686] Q. Had you ever spoken to her about it before. The fact that you were being put on an operation that you had not been able to do?

A. No. I didn't.

Q. Not until the day you were discharged?

A. Not until the day I was discharged.

Trial Examiner: When you told her that you thought they put you on that job so that they could fire you, what did Grace Higgins say to you, if nything?

The Witness: Well, there in the office, she just agreed that I could not—that I could never make the sleeves.

Trial Examiner: That's not the question I asked you. The question I asked you, Mrs. Hudson, was, did you testify to the fact that yo· told Grace Higgins that the reason you felt they put you on this job of making sleeves was because you couldn't [687] make sleeves and in doing so, they would have an opportunity to fire you again. Now, what did Grace Higgins say, if anything, after you said that to her?

The Witness: Well, not any· ·ng.

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[695] Q. Who was doing the work, the operation that you did before the lay-off after you went back sewing sleeves?

A. Grace Barns and Bonnie Thompson.

Q. Is that all they were doing? Did it take both of them to do what you had done before you left there?

A. No. They did that along with their job.

Q. Then they were still doing the same thing that they did before you left, and in addition to that they were

doing the operation that you had done around there, weren't they?

A. That's right.

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[696] Q. You signed an authorization to the Union authorizing them to use your name in that letter; isn't that right?

A. That is right.

Q. And you had never seen the letter that Morris had in his hand until the time Morris showed it to you; is that correct?

A. That's right.

Q. At the time Morris showed you that letter you related to us a certain conversation you had with him. You don't recall the exact words that were used, do you?

A. No; I do not recall the exact words, but—

Q. That answers my question. Had you ever done any work in the needle trades industry—

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[697] Q. What place was that?

A. That was at Tacula Sportswear.

Q. Did you make your production there?

A. I had been making it, and they told me they were going to have to let me go, because I had a five-dollar make-up one week.

Q. Did you ever work any other place in the needle trades industry?

A. Yes; I have. I worked in Duluth. I made travelling bags there.

Q. Did you ever work at Red Fox?

A. I did.

Q. Where is that located?

A. That's on 78 Highway out from Monroe towards Atlanta.

Q. Did you have any trouble with your production there?

A. I didn't make it.

Q. Were you discharged from that job because of your failure to make production?

[698] A. Yes; I was.

Q. Now before you were put on the job which you have described as being the work that you were able to do, and which you did successfully, I believe you stated that you had something to do with darts; is that right?

A. Yes. I sewed in some darts at the beginning.

Q. Did you have any trouble with that?

A. Well, I don't remember.

Q. Isn't it true that you didn't do too good at that?

A. Well, probably—I don't think I did. For I didn't stay on it.

Q. Then you were changed around after that to several other jobs before you ended up in the sleeve section; isn't that right?

A. Yes.

Q. And the job that you have described here in detail is tacking and turning sleeves; is that right?

A. That's right.

Q. Would you agree with the statement that this is a plain sewing job, with a single-needle machine?

A. That's right.

Q. After you went back in June of 1958 did you have any trouble making your production?

A. After I went back in June 1958 making sleeves I did not make my production.

[699] Q. As a matter of fact didn't you have substantial make-up pay; sometimes as much as half of your pay?

A. Yes.

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[700] LELIA HAULK.

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[715] BESSIE SATTERFIELD.

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[720] Trial Examiner: Now, I have a specific question to you. Were you discussing this letter that you had seen on the bulletin board?

The Witness: Well, we had talked about it. We hadn't seen the letter then. We had talked about it the day before—about writing. And wondered if we could get an address that we could write to this place to have our names taken off.

Trial Examiner: That was the day before this was on the bulletin board?

The Witness: That's right. And then the next morning, one of them said, "Well, I'll bring an envelope." The other said, "I'll bring a stamp". And I said, "Well, o.k., then." And we just all agreed to get together at lunch and fix the letter up and write it.

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[721] Exhibit 9, that was up on the bulletin board. Is that right? And you saw it, did you?

The Witness: Yes, we did.

Trial Examiner: And did the other girls see it?

The Witness: Yes, they did.

Trial Examiner: And did you discuss it?

The Witness: Yes. I says, "Well, how are we going to write it?" One of them spoke up—I don't know which one. Said, "Well, it's on the board. We can get the address from the board."

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[722] Trial Examiner: And what made you sign the card?

The Witness: Well, because I just didn't—I felt like if Morris was able to run a business of his own, why, it was his privilege to pay what he wanted to pay and I was satisfied with what I was making.

Trial Examiner: Is that what you felt at the time you signed the card?

The Witness: That's exactly the way I felt.

Trial Examiner: You're not listening to my question, now. I'm talking about at the time you decided to sign that card for the union. You signed a card for the union a month before you wrote this letter. Now, at the time you signed the card, I wanted to know why did you do that?

The Witness: Well, after I had signed it, I—

Trial Examiner: I'm talking about not after you signed it—at the time you signed it.

The Witness: Well, at the time I signed it, I never did tell them that I was for the union. Before I knowed it, she had my name signed—had me signing my name and I didn't know what I was signing.

Trial Examiner: You didn't know what you were signing?

The Witness: I didn't.

Trial Examiner: You didn't want to join the union?

The Witness: I did not want to join the union.

Trial Examiner: And then what made you decide a month [723] later to write this letter?

The Witness: Well, I just didn't want to belong to the union.

Trial Examiner: Why didn't you write this letter the day after you signed it? When you decided that you didn't want to sign for the union.

The Witness: Well, see, the more I studied about it, the worse I felt about it. And I just kept putting it off and kept putting it off and I didn't know how to go about it after I had signed it.

Trial Examiner: Did you attend any of the union meetings?

The Witness: I did not.

Trial Examiner: Did you sign it before the union meetings were held, or after the union meetings were held?

The Witness: They hadn't had no—helt no meetings when I signed this card.

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[724] Trial Examiner: Now, just answer the questions you are asked.

Did anybody suggest that you withdraw from the union?

The Witness: No, they didn't.

Trial Examiner: Mr. Sharff?

The Witness: No, they didn't mention it to me.

Trial Examiner: And this letter had nothing to do with it, either. Is that right?

The Witness: That's right.

Trial Examiner: It was your own decision made just the day [725] that the letter was put on the bulletin board. Is that correct?

The Witness: That's correct.

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[727] Mr. Joy: Yes.

Mr. Thompson and I have agreed to stipulate that this document consists of notes made by Mr. Prosterman, and that if Mr. Prosterman was called to testify, he would testify that it was prepared some time in December, 1957.

Trial Examiner: Notes relative to what?

Mr. Joy: Notes relative to the selection of employees for layoff.

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[775] I. R. PROSTERMAN.

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[779] The Witness: Charlotte Finley did the operation known as bottom lining basting. Pauline McGee did the operation known as bottom hem basting. At the time of the lay-off Charlotte Finley took over Pauline McGee's work.

Sometime later, exactly when, I cannot say. Pauline McGee's former job, the bottom hem basting, was eliminated as an operation. It was combined with another operation called edge basting. At that time it left Charlotte Finley with insufficient work.

As a result thereof Charlotte Finley—let me explain further. You also mentioned Geneva Harris. Geneva Harris' work, in the meantime, was increased; not sufficiently to [780] give her full time work at that job, which

was known as bottom felling. Therefore, the job vacated by Ida Harper was accomplished in part by Charlotte Finley, in part by Geneva Harris, in part by Mary Alice Winslett, and several other operators.

Q. (By Mr. Joy) Now in connection with the rearrangement of work after laying off certain employees, did you assign other employees to new operations?

A. In certain instances operators remaining within the section absorbed the work done formerly by the people who were laid off.

Q. Isn't it true that you also transferred some from entirely new operations?

A. I don't understand the question. Transferred them from entirely new operations?

Q. From one operation to an entirely new operation.

Q. (By Trial Examiner) At the time of the transfer — of the lay-off, when these other people were laid off, did you also, in addition to laying off some people, transfer other employees whom you retained to different operations than they had been doing; entirely different operations? I think that's Mr. Joy's question.

Mr. Joy: Yes, sir.

A. It is possible, but I don't recall any particular instance or the reason therefor.

[781] Q. (By Mr. Joy) Wasn't that true with respect to Mary Barnes? Was she not transferred from sleeves to pants work?

A. Mary Barnes was laid off—

Trial Examiner: Just answer the question, Mr. Prosterman. You were asked whether Mary Barnes was transferred from sleeves—was it—to pants work?

Mr. Joy: Yes, sir.

A. The answer is no.

Q. (By Mr. Joy) Did she work on sleeves before the lay-off?

A. Yes.

Q. And was she recalled very shortly after the lay-off?

A. What do you mean by "very shortly"?

Q. Within a few weeks; two or three weeks, four weeks?

A. Well, I would say approximately four to six weeks I don't have the exact date.

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[790] Q. (By Mr. Thompson) Mr. Prosterman, you testified a little while ago as to the factors you took into consideration in determining which employees to lay off and which ones to retain. Will you explain, please sir, where the make-up work came into play, in so far as the production factor was concerned?

A. Well, make-up, in considering the amount of make-up on an [791] employee, it was only a measure of his production, you might say, in reverse. The employee who had the most make-up had the least production. That is the only way I can bring out the fact that make-up was a factor.

Q. Then to that extent it was taken into consideration by you—or was it?

A. Well, as make-up; no. As make-up; no.

Q. When did you take it into consideration?

A. Well, it wasn't taken into consideration. The amount of production was taken into consideration.

Q. Now how does make-up relate to production?

A. The operator who produced the least had the most make-up.

Q. Then you were looking at the other side of the ledger; rather than looking at the deficiency that would come under make-up, you were looking for the production.

A. That's right. I was looking for the operator who could produce the most and had the best potential for future production.

Q. What do you mean by the best potential?

A. The operator, which in my judgment would prove to be the best operator in the long run. Produced the quality of merchandise, with little or no make-up.

Q. Did you have any set rule at all which covered all of the jobs, in so far as make-up was concerned?

A. There was no set rule about any of the jobs, as far as [792] make-up was concerned.

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Q. Then after Pauline—I mean Charlotte Finley got through doing it, did anybody else do it?

A. No. It is very possible that while Charlotte Finley was learning the operation, that we may have had another operator also assisting in order to maintain the production until Charlotte Finley got to the point where she could handle it all, but I did say prior to that time, prior to the time—or not prior to the time, but during the time we eliminated Pauline McGee's operation, or the operation which she had done.

Q. In other words—did you eliminate the work that was done?

A. That was transferred into—and combined into another operation, known as edge basting.

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[815] ARTHUR SHARFF.

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[823] Q. Do you know a man by the name of Prosterman?

A. Yes, sir.

Q. Did—does he have any connection with the Walton Manufacturing Company?

A. He is employed there.

Q. Has he ever had any connection with the Loganville Pants Company?

A. No, sir.

Q. What is Mr. Prosterman's position with the Walton Manufacturing Company?

A. He is our head supervisor over sewing, pressing and finishing of our coats.

Q. Is the plant, the Walton plant, divided into departments?

[824] A. Yes, sir.

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Q. (By Mr. Thompson) Which of those departments did Mr. Prosterman supervise for you?

A. Our sewing, pressing and finishing.

Q. Who supervised the other departments?

A. I did, sir.

Q. Do you still supervise those other departments?

A. With the exception of the office; my dad supervises the office, 90%, say, at present.

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[838] Trial Examiner: As you pointed out, there has been no question raised as to the necessity of the lay-off. Therefore you don't have to justify the necessity of the lay-off.

Mr. Thompson: No, sir; but the timing of the decision as to when the lay-off would be made, and the timing when they started analyzing these employees and deciding which would be laid off and which would be retained, is important in view of [839] the fact that the Union served a notice on us on a certain day that these were their people.

Trial Examiner: All right. Can we find the last question, or do you want to rephrase it?

Mr. Thompson: I would like to have it.

The Reporter: (Reading) "Q. During this period, as your production increased, did the production of the individual employees, the output of the individual employees, change in any way?"

"A. It increased."

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[840] Q. Was there any change in your production requirements during the fall of 1957?

A. Yes, sir.

Q. In which direction was that change?

A. Toward the end of the fall season we required less garments.

Q. Was there any move, was there any policy adopted on your part with respect to the work force or the capacity of the plant at that time?

[841] A. At the very beginning, in October, we went on short time. Then we saw where—

Q. What do you mean by short time?

A. Went down to as much as two and a half, three days a week, eight-hour days. But it's very hard for a person to make a living working those hours, and it was a question of cutting the labor force down in order to give the remaining a living.

Q. Was any policy adopted with respect to the number of employees that you would continue to employ after that time?

A. No, sir. Not a set number. Only a set production. Amount of finished garments.

Q. Did that have any effect at all on the number of employees that you had?

A. I would say it would be directly proportionate.

Q. What did you do, once you made your determination as to your production requirements?

A. Then I spoke to Mr. Prosterman and told—informed him to bring his factory in line with our production requirements.

Q. (By Trial Examiner) All right. Now let's get some specific information in this record. What did you tell Mr. Prosterman your production requirement was?

A. 300 garments.

Q. And what did you tell Mr. Prosterman to do?

A. To produce 300 garments a day, sir.

Q. Well now, how many were you producing when you were on the [842] two and a half to three day—

A. There would be approximately 400, 425 garments each day would come out.

Q. That two and a half, to three-day week, you were turning out at the rate of 300 per day for that whole week, is that it?

A. No. Our daily production would stay the same, whether we worked one day, or whether we worked all week, sir.

Q. When you spoke to Mr. Prosterman about 300 a day, were you telling him to work 300 a day for the entire week, or were you telling him to work 300 a day for a two and a half day week, or three-day week?

A. 300 a day for a five-day week, sir.

Q. Did you tell him that you wanted to discontinue the two and a half to three-day week?

A. Yes, sir.

Trial Examiner: You may continue.

Q. (By Mr. Thompson) About when did this take place?

A. I would say it started in the latter part of October and continued through November.

Q. Was there any change in your production requirements in December?

A. No, sir.

Q. Was there any policy adopted with respect to the production which you would have subsequent to December?

[843] A. I didn't follow that one.

Q. Did you have any instructions that you gave Mr. Prosterman as to the production he would have subsequent to December?

A. No.

Q. Was there a lay-off at any time after that?

A. After December?

Q. Yes.

A. We had a—we laid off people in January, sir.

Q. What was the occasion then?

A. In order to meet the figures that were called for.

Q. When were those figures called for?

A. Well, we had hoped that business would open up in January, as we normally go out selling for the spring. We start selling in October and November, and we had hoped in January to also get sales which didn't materialize. Therefore, a change had to be made.

Q. When did that take place?

A. Latter part of January. I think during the whole month of January. And also in December—excuse me.

Q. When did the Loganville Pants Company cease operations?

A. End of January.

Q. What—After that, where were the pants made and where were the coats made that you produced?

A. On our own premises.

Q. People who produced them, who employed them?

[844] A. Well, I would say it was automatic, to the respect that Loganville Pants was out of business, and as our production was lower, less people were needed, so the operators were picked and told to report to work. As to who told them to report to work, I couldn't exactly tell you.

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[845] Q. (By Mr. Thompson) Mr. Sharff, I will hand you a document which has been introduced in evidence as General Counsel's Exhibit 9, and ask you if you have ever seen that document.

A. Yes, sir; I have seen it.

Q. What was the occasion for your—Did you write Mr. Wilson, as it states in this letter?

A. I believe so.

Q. What was the occasion for your writing that letter?

A. I would say that—oh, in November, why, quite a few people—of our employees, came to me and advised me that they had signed a union card, and told me that they didn't know what they were signing at the time, and what could they do to get out of it. They didn't want to have any part of it. At which time I consulted our attorneys, to see if there was anything they could do.

Q. What did you do, if anything, after you received that letter?

A. I believe that we also received another notice which we posted on our bulletin board. We received a notice from our attorneys telling people what they could do if they wanted to do it, which was posted for their convenience.

Q. Mr. Sharff, I hand you a document which has been introduced into evidence as General Counsel's Exhibit 6-A, and ask you if you have ever seen that document before.

A. No, sir; I haven't.

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[865] Q. (By Mr. Sheinkman) Do you know why Lucille Yancey was laid off?

A. No. I don't concern myself with particulars.

Q. Did you know why any employees were laid off in January 1958?

A. I know that they were laid off due that we had too much help, and the policy was set how the labor should be handled. That X number of people were going to be laid off, whether they were union, non-union or who.

Q. I ask you the question again. Do you know why Grace McCart was laid off?

A. I believe she was laid off for poor workmanship, because her name has been mentioned quite a bit.

Q. How about Pearl Coker?

A. I don't know.

Q. How about Bonnie Hamilton.

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[870] A. Make-up was still terrific with everybody.

Q. How long did the high make-up continue, would you say?

A. Until possibly December, or January of '58.

Q. And then the make-up dropped off; is that right?

A. Yes, sir.

Q. Would you say that make-up was a factor considered in laying off or keeping employees at the Walton Manufacturing Company?

A. No, sir. Make-up—

Q. Make-up is not a factor.

A. As far as I am concerned, it isn't.

Q. What are the factors—what were the factors?

A. The factors are to produce a garment as economical as possible, both now and in the future, plus the fact that we have maintained, since our beginning, that we want quality. So I would say quality was possibly number one. Possibly production, two. And seniority, or anything coming afterwards.

Q. Did you discuss quality with any of the workers in the sewing department?

A. On occasion. Maybe one or two.

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[885] MYRTLE EWING.

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[888] Q. (By Mr. Thompson) Will you give us an example of what the result of her sewing not being up to par was? What did the garment look like? What was the deficiency that you—

A. There are so many different ways that you could sew an under-collar to make it wrong; either too low or too high; put the fullness in the wrong places; use the wrong colored thread. Those were some.

Q. Were those some of the things that Grace McCart was doing?

A. Yes.

Q. She was doing those?

A. Yes.

Q. Did you ever speak to her about that?

A. Oh, yes.

Q. Did you ever speak to her more than once?

A. Yes.

Q. Was the correcting of her a regular thing, or did it just happen a few times?

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[891] Q. Now was anybody else in your unit laid off or discharged on the 31st of January?

A. Not that I can think of.

Q. You say Ida Harper was discharged?

A. Yes.

Trial Examiner: Not laid off.

The Witness: That's right.

Q. (By Trial Examiner) What was she discharged for?

A. Well, Ida was a bit immature. She could have been a good operator. But she just wouldn't settle down and go to work.

Q. Had you been having trouble with her before?

A. Oh, yes. Continuously.

Q. Had you talked to her about it?

A. Yes. Daily.

Q. What made you select that particular day for discharging her? What did she do on that day that caused you to discharge her?

A. It was a culmination of bad work.

Q. Now you didn't tell me anything about the bad work. I thought you said she was immature.

A. Immature, which led up to bad work, of course.

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[892] Q. (By Mr. Thompson) Mrs. Ewing, after Ida Harper was terminated, who did the work that she had done prior to that time?

A. Utility girl, and a girl that was on an operation that [893] was performed just before the one Ida did when she ran out of work due to the cut-back in the whole production. She didn't have enough work on her own job, so she had extra time, and she filled in that extra time on Ida's. What she didn't complete, utility girls did.

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[897] Mr. Thompson: Mr. Examiner, I don't intend to misuse the term. I think she did testify that this woman was a part of the lay-off.

Trial Examiner: She testified she was discharged on January 31st. The date is the same date.

Mr. Thompson: Yes, sir. She also testified a very important reason for that was the lay-off they were having, and [898] that's the reason I am adverting to that—

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[900] Trial Examiner: Let's not find out what she didn't mention. We want to know what she did mention.

A. I asked her if she knew that there was organizers, union organizers in the vicinity.

[901] Q. (By Mr. Thompson) And what did she say?

A. She said yes.

Q. And what did you say then?

A. That ended the conversation.

Q. Did you say anything about unions other than that, before that time?

A. No.

Q. Did you mention anything to her about Morris Sharff?

A. No, sir.

Q. Did you say anything that Morris had said; relate anything to her that Morris had said?

A. No.

Q. Did you say anything about anybody being fired if they joined the Union?

A. No.

Q. I believe you testified that Nellie Wood was under your supervision at the time she was employed there.

A. That's right.

Q. Did you have any conversations with Nellie Wood after the time she was laid off, or terminated?

A. Yes.

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[902] Q. This was a conversation face to face, was it not?

A. Yes.

Q. What was the occasion, if anything, that Nellie was at your house? Was there any particular occasion there?

A. Yes. She asked me did I suppose if she withdrew from the Union would Morris give her her job back?

Q. What did you say to that?

A. I told her I did not know.

Q. Was there anything else said between you and Nellie at that time?

A. She asked me would I talk to Morris and I told her that I would.

Q. Did you recall anything else that might have been said between the two of you?

A. That was about all of it.

Q. Now did you have any other conversation with her at the time that had no relation to that particular subject?

A. No.

Q. Did you ask Nellie to come to your house at that time?

A. No.

[903] Q. Did you ever report this conversation to Morris?

A. No.

Q. Did you ever report back to Nellie concerning it?

A. No.

Q. (By Trial Examiner) Did you ask Morris about getting her a job back?

A. No, I didn't.

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Q. (By Mr. Thompson) Will you tell me what your reasons were?

A. Well, they were the reasons that she was laid off. We just didn't have the work for her. We had not increased our production any, and if we had—Morris had seen fit to have taken [904] her back, she would have been—since she was trained under my supervision, she would have, in all probability, been my operator again, and her work wasn't up to the other girls, and I would have preferred not to have had her.

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[905] Q. Did the fact that their names were on that letter enter into your consideration in their lay-off or discharge?

A. It did not.

Q. Did you have any instructions to discharge them because their names were on that letter?

A. No.

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[906] Q. (By Mr. Joy) Mrs. Ewing, yop said that yop spoke regularly to Grace McCart about her alleged bad work. What do you mean by regularly?

A. Sometimes every day, sometimes several times in one day. Maybe again it wouldn't be every day.

Q. Did Grace McCart make production?

A Sometimes.

Q. How much?

A. You mean how much time? How many times?

Q. How much of the time did she make production?

A. Part of the time. I don't remember exactly.

Q. Did she make it most of the time?

A. Well, she does now.

Q. Didn't she before she was terminated?

A. Some of the time.

Q. I beg your pardon?

A. Some of the time.

Q. When all this bad work was found, that you are talking about, what was done about it?

A. It was repaired.

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[909] Q. On direct examination you stated that the reason that she was discharged was because of immaturity; wouldn't settle down and go to work. That you talked to her daily about that.

A. That's right.

Q. And you said then that there were no other factors involved--involving her. Are you changing your position on that?

A. No. I think that would take in all of the causes.

Q. (By Trial Examiner) What were they all, again?

[910] A. Are you asking me?

Q. Yes; I am asking you.

A. Immaturity of conduct; just general horsing around.

Q. Bad quality of work have anything to do with it?

A. Well, if you do those things, your quality can't be up to par.

Q. Well, did it have anything to do with it?

A. Well, I feel that it did.

Q. And was there anything else?

A. Well, we didn't need the operation, a full time operator. We just didn't have enough work for a full time operator on that one operation.

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Q. (By Mr. Joy) Did Charlotte Finley also take over Pauline McGee's operation?

A. Part of it.

Q You mean she took over most of Ida Harper's operation—

A. No; part of it.

Q. Part of Ida Harper's.

A. Yes.

Q. Part of Pauline McGee's, and all of her own.

[911] A. All of her own. Part of the other two.

Q. You say that Pauline McGee's operation was eliminated some weeks after termination. How was it eliminated?

A. We combined it with another operation.

Q. What was that other operation?

A. Edge basting.

Q. Who did that?

A. Laverne Bowen.

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[917] Q. (By Mr. Joy) Morris Sharff, or some of the Sharffs, had made the statement, had they not; that the girls would be fired, if they joined the union?

A. I didn't hear it.

Q. You didn't hear it.

A. No.

Q. Did you ever have any discussion with them at all about the union?

A. No.

Q. Never had any word of discussion at all with Mr. Morris Sharff about the union situation.

A. No.

Q. Did you ever have any with Mr. Prosterman about the union situation?

A. No.

Q. Never a word.

Q. (By Trial Examiner) How about Mr. Arthur Sharff?

A. No.

Q. When did you first find out the union was attempting to get recruits among the employees of the plant?

A. I heard it from the girls.

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[919] Q. How many employees did you supervise between January and July 1958?

A. Well, it's the same that are employed now, because I haven't any new ones.

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[931] Q. How much poor quality did she have?

A. Well, I don't know how much, but her quality just wasn't as good as Johnnie's and Laverne's.

Mr. Joy: Nothing further.

Q. (By Trial Examiner) Were there ever any meetings of the supervisors in your plant?

A. Not as a whole. I only remember one.

Q. When was that meeting held?

A. Right before Christmas.

Q. Of 1957?

A. Yes.

Q. And what discussed—what subject was discussed at this supervisor's meeting?

A. Our Christmas bonus.

Q. Was that all?

A. That's all.

Q. Was there ever any meeting of supervisors in which the supervisors were instructed not to discuss the Union with the employees in the plant?

A. No.

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[932] SARAH SANDERS.

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[934] Mr. Thompson: You will have to forgive my local one!

Q. (By Mr. Thompson) Did you ever know anyone who worked there by the name of Grace McCart?

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Q. Did you ever, during the fall and winter of 1957, find any coats that Grace McCart had sewed that were not properly [935] sewn?

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Mr. Sheinkman: Something is wrong with the question. There is an assumption.

Trial Examiner: You are a little bit late with your objection.

Q. (By Mr. Thompson) What did you observe, Mrs. Sanders, that led you to the conclusion that they were not properly sewn?

A. Well, some would have skipped places in them, and some would have the wrong kind of thread in them matching the color.

Trial Examiner: You mean the wrong color thread?

The Witness: Yes, sir.

Q. (By Mr. Thompson) Did you have occasion to observe this more than once?

A. Well, the work would run—I mean, good and bad.

Q. Were there days when you wouldn't see this, and then other days that you would. Is that what you are testifying to?

A. Yes.

Q. Was it a fairly regular thing; or was it just once in a while?

A. I would say she had a good many.

[936] Q. Now was this [illegible] on up to the time she left there, or not?

A. Yes, sir.

Q. Did she have any more about the time she left than she had been having before?

A. She had a good many.

Q. Did you hear Morris Sharff make any speeches in the plant?

A. Yes, sir.

Q. Did you ever hear him say anything about they were going to close the plant if the Union came in?

A. No, sir.

Q. Did you ever hear him say anybody was going to be fired if the Union came in?

A. No, sir.

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[940] Q. After she quit work, did you continue to get bad collars?

A. I would say not as many.

Q. But you did get bad collars.

A. Some.

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[942] CHARLOTTE TOWLER,

a witness called by and on behalf of the Respondents.

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[943] Q. What job do you perform there?

A. Final inspector.

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[944] Q. Do you know a person named Grace McCart?

A. Yes.

Q. Was she employed at the Walton Manufacturing Company?

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Q. Mrs. Towler, while you were inspecting in the fall and winter of 1957, did you ever observe anything defective about the collars of the coats that were coming to you for inspection?

A. Yes.

Q. What did you observe?

A. The collars weren't caught onto the body of the coat.

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Q. (By Mr. Thompson) Did you observe anything else about them?

A. Had the wrong thread, sometimes. The thread didn't match.

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[952] Q. (By Mr. Thompson) Mrs. Towler, do you recall whether these cards that you referred to, or that you put in the coat when you sent it back for repairs, were in use before Grace McCart was terminated, at the time you refer to of her being terminated?

A. Yes; they were.

Q. Were they in use for a period of several weeks before she was terminated?

A. Yes.

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[953] A. When we were taking the cards back, they would say: This machine, and everything. And I knew one girl was at a machine. And that Grace's collars were just coming in that way.

Q. Did you tell the supervisor it was Grace's collars?

A. No.

Q. (By Mr. Thompson) Was anybody else sewing that part of [954] the collar?

A. No.

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[956] Q. And was there anybody else in the plant that was sewing that portion of the collar that Grace McCart sewed?

A. Not that I know of.

Q. And did you run across, in the course of your inspection, defects in that portion of the collar that Grace McCart was sewing?

A. Yes.

Q. I believe you testified that you ran across that frequently, did you not?

A. Yes.

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[957] Q. (By Mr. Thompson) When you answered Mr. Joy's question, he asked you the question did you find defective work as much as once a week, and you said No to his question. Did you mean No, you didn't find it that much; or did you mean No, that you found it more than that?

A. I found it more than that.

Q. And how frequently did you find it?

A. Well, we had collar trouble every day.

Q. And what portion of the collar were you having trouble with?

A. The under-collar.

Q. And who sewed that part of the collar you were having trouble with?

A. Grace McCart.

Q. Now do you know of your own knowledge that Grace McCart was sewing that part of the collar?

A. Yes.

Q. Now after Grace McCart left there, and came back, did you have as much trouble with that part of the collar, did you have as many defects—did you turn up as many defects in your [958] inspection, as you turned up before she left there?

A. No.

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[961] IMOGENE MEEKS.

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The Witness: Imogene Meeks, Route 1, Loganville.

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[965] Q. Now if the coat were properly sewn, would the numbers be the same, or would they be different?

A. Would the same number be on—

Q. If Lucille Yancey had properly done her job, would the numbers on the facing be the same, or would they be different numbers?

A. When she sewed them on the right side, they would be the same.

Q. And what would be on them, if she hadn't sewn them on the right side?

A. They would be the same numbers, but she would get two 14's—like there would be two 14's and she put one 15 on one 14, why that would be the wrong size.

Q. Did you ever get any coats from Lucille Yancey that had two different numbers on them?

A. Sure did.

[966] Q. Now did the numbers indicate sizes?

A. Yes, sir.

Q. Was there any difference in the size of a 15 as opposed to a 14, or were they the same?

A. They could be the same size, but the numbers would be wrong and that would sew the coat wrong.

Q. Did this happen very often, that you got coats from Lucille that had the wrong numbers on them?

A. We got a good bit.

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[969] Q. Have you ever observed any darts that were not sewn properly?

A. Yes.

Q. Have you ever sent any coats back to Lucille, or to your supervisor, because of defective darts?

A. Yes.

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[970] Q. (By Mr. Thompson) Did you ever overhear supervisor Higgins correcting Lucille about her work?

A. Yes.

Q. That's Lucille Yancey, I am referring to.

A. Yes.

Q. What was the nature of the corrections that you heard?

A. She would tell Lucille that she would have to do it better.

Q. Did you hear this more than once?

A. Yes; I heard it more than once.

Q. Did it happen very often while Lucille was working there?

A. Yes; it happened a good many times.

Q. I beg your pardon; I didn't hear you.

A. It happened a good many times.

Q. Did you ever hear Lucille and Mrs. Higgins arguing over it?

[971] A. Yes.

Q. Did you ever hear Lucille arguing about anything else?

A. She would argue about us making more than she did.

Q. Who would she argue that to?

A. Me and Odele Barnes.

Mr. Thompson: No further questions.

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Q. (By Mr. Joy) Your statement, Mrs. Meeks, about the amount of sewing with these two numbers, different

numbers; you said you got a good bit. What do you mean by a good bit?

A. We would get a lots of them back that we would have to have done over.

Q. What do you mean by a lot of them?

A. We got her work—she got her work first, and we got it after her. We would have to do it, and it would be wrong, and we would have to send it back to her.

Q. How often did that happen?

A. A good many times.

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Q. (By Mr. Joy) Would you say it happened once a week?

A. It happened more than once a week.

Q. Twice?

[972] A. More than that.

Q. How often?

A. We would get one every day, if not two.

Q. One or two.

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[973] Q. Now about this dart on the wrong side. About how many of those would there be?

A. We got right smart of that in a week's time.

Trial Examiner: I didn't hear that.

The Witness: We got right smart back, in a week's time.

Q. (By Mr. Joy) About how many a day?

A. Sometimes we would get lots back, and sometimes we wouldn't get any back.

Q. What do you mean by "lots"?

A. We would get a good many back.

Q. A hundred?

A. No. Not a hundred.

Q. Ten?

A. Not in a day's time, we wouldn't.

Q One or two?

A. Yes.

Q. Now when you say that you heard Lucille Yancey and Grace Higgins arguing, tell us just what you heard.

[974] A. Well, Lucille would get mad because Grace would say something about her doing bad work.

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A. Grace would tell Lucille she would have to do her work better.

Q. What did Lucille say?

A. She would argue with Grace about it.

Q. What would she say?

A. I don't know what all she said.

Q. All right.

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[978] Q. When did you tell Morris that Lucille Yancey's work was bad?

A. Tuesday.

Q. Was that the first time?

A. Yes.

Q. You had never told him that before?

A. No. We always tell Grace. We were told to tell Grace.

Q. When did you tell Grace that Lucille Yancey's work was bad?

A. We would have to give it back to her, when we got bad work.

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[979] Q. Did you say something about her complaining that you were making more money than she was?

A. She would tell other people that we were. She would get mad because we were making more money than she was, but we had to work harder than she did to send the work through.

Q. Did you get along all right with Lucille Yancey at work?

A. Yes.

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ODELLE BARNES.

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[985] Q. And when you got the coats, did they have any numbers on them after Lucille had performed her job on them?

A. Sometimes Lucille would get the numbers mixed up.

Q. What do you mean by that?

A. We would have a 15 with a 14, a 16 with a 17, and those numbers have to be kept straight in order to get the linings.

Q. Could you sew your pocket on a coat that had two different numbers on the facings?

A. No; I can't.

Q. Why not?

A. Because it would mess up a whole coat. Have a different color lining in it.

Q. So what could you do—or what did you do at that time, when you got a coat that had two different numbers on it, on the facing?

A. Well, I would call Grace Higgins and show her the numbers and all, and she would carry it back to Lucille and get it straightened out.

Q. And what had to be done, in order to straighten it out?

[986] A. Well, that 14 would have to be took off and put with that other 14, to straighten it out.

Q. By "took off", what do you mean?

A. Took off the lining part.

Q. Was the number taken off, or was the facing taken off?

A. The whole facing.

Q. And then what was done?

A. Put with that other 14.

Q. Did this happen more than once while Lucille was working there?

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Q. Was it more than ten? Was it fewer than ten?

Q. (By Mr. Thompson) Did it happen on a regular basis, throughout this time, or not?

A. It happened a good bit, but I just don't remember how many times, or—

Q. (By Trial Examiner) Do you remember how regularly?

A. A good bit.

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[987] Q. Did you ever give Mrs. Higgins any coats back on account of anything being wrong with the darts?

A. Yes, sir. They would be made on the wrong side.

Q. What do you mean, they would be made on the wrong side?

A. Well, see? you can always tell when you don't fix it so that—the seam would be on the wrong side, where we have to put the pocket, and we couldn't sew the pocket onto the darts on the right side.

Q. The wrong side of what?

[988] A. The lining.

Q. And what would you do with coats, when you got them like that?

A. I would call Grace and tell her, and she would carry them back to Lucille.

Q. Was anybody else sewing those darts, other than Lucille while she was there?

A. No, sir.

Q. Did anybody get these coats between Lucille and the time you got them?

A. No, sir. We got them from Lucille.

Q. Did you ever overhear Grace Higgins, the supervisor, talking to Lucille about her work?

A. No, sir.

Q. Did you ever see her take any work back to Lucille which you had—

A. That I would give her? Yes, sir.

Q. Did you see her do that—

A. You know, I would have to call Grace and show her that that weren't my job, to take it back to Lucille. I always call Grace, if anything goes wrong, and showed her. And let her do the carrying back.

Q. Did you ever carry any back?

A. Yes, sir.

Q. Did any of your supervisors ever say anything to you about [989] the Union?

A. No, sir.

Q. Did you hear any speeches made at the time?

A. Yes, sir.

Q Who did you hear make a speech?

A. Morris.

Q. Did you ever hear him say anything about closing the plant on account of the union?

A. No, sir.

Q. Did you ever hear him say anything about firing anybody on account of the union?

A. No, sir.

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[991] Q. (By Mr. Sheinkman) Mrs. Barnes.

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[992] Q. Answer my question. Is that sometimes you got mixed up as much as the sometimes that Lucille Yancey got mixed up?

A. No.

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[995] Q. (By Mr. Thompson) Mrs. Barnes, you testified that you sent work back through Mrs. Higgins that Lucille Yancey had done. Now you remember that taking place.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. You do the work now that she was doing then.

Trial Examiner: Any objection?

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Q. (By Mr. Thompson) Mrs. Barnes, I ask you to think of the work that you get back now, as you just have testified to, and the work that Lucille Yancey got back when she was doing this sewing on the facings, and tell us who got the most work back; who made the most mistakes; you or Lucille Yancey?

A. Lucille.

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[997] RUBY BERRY.

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[998] Q. And which operation came first in the manufacture of the coats; Lucille's or yours?

A. The facings.

Q. That would be Lucille's.

A. Yes.

Q. Did any operation come in between your operation and Lucille's?

A. The cutting of the pockets.

Q. And who did that?

A. Ruby Brooks.

Q. Did anybody else do the work that you were, sewing in the pockets?

A. Odelle Barnes and Imogene Meeks.

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[1002] Q. Did you ever run across any that didn't have the same number?

[1003] A. Yes, I did.

Q. What did you do with them?

A. I give them back to C ace.

Q. What did Grace do with them?

A. She took them back to Lucille.

Q. What did Lucilie have to do with it?

A. She had to take them out.

Q. Had she had anything to do with it prior to that?

A. No, she didn't--well, she sewed them wrong. She was the only one that sewed them.

Q. Now what else, if anything, did you find wrong with coats that caused you to give them back to Grace?

A. Well, that was all, because, see? that was the beginning of the linings, and the facings.

Q. You made some mention a minute ago about darts.

A. Well, she sewed darts. Sometimes the darts would be on the wrong side.

Q. The wrong side of what?

A. The lining.

Q. And how would that affect your work?

A. Well, we couldn't sew them, because when it came to us—

Q. Couldn't sew what?

A. The pocket.

Q. All right.

A. Well, it would—the darts would be on the wrong side. Well, we would have to send them back for her to put them on [1004] the right side.

Q. Who is her?

A. Lucille.

Q. Is that Lucille Yancey?

A. That's right.

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Q. (By Mr. Joy) When you took work back to Grace Higgins, or gave it to Grace Higgins, did you see her take it to Lucille Yancey?

A. Sometimes, and sometimes I didn't, because I went on sewing. Sometimes I had to wait for it to come back.

Q. About how often did you find such defects as that?

A. Well, sometimes pretty often.

Trial Examiner: Can you be more specific, Mrs. Berry? I don't know what you mean by "pretty often."

[1005] The Witness: Well, every day or so.

Trial Examiner: How many, every day or so?

The Witness: I didn't count them.

Q. (By Trial Examiner) A good many?

A. Sometimes. And sometimes just a few.

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[1007] Q. And he handed them to Lucille Yancey; is that right?

A. He laid them on the table. She shoved them off the table at a little old part that was pushed out.

Q. And she was required to make enough to keep the other two girls going; namely, Imogene Meeks and Odelle Barnes; is that right?

A. Well, I don't know whether she made production.

Q. Were Imogene Meeks and Odelle Barnes kept working while you were there?

A. Yes.

Q. And who supplied them with work?

A. Lucille Yancey.

Q. And if they—if she didn't supply them with work, they wouldn't have had work to do; is that right?

A. Well, they check out.

Mr. Sheinkman: No further questions.

Trial Examiner: Any more questions, Mr. Joy?

Mr. Joy: No, sir.

Re-Direct Examination.

Q. (By Mr. Thompson) Mrs. Berry, which takes the longest; sewing the facings, or sewing of inside pockets?

A. The inside pockets.

[1008] Q. About how much longer does that take?

A. A good bit longer.

Q. Which is the more complicated of the two jobs?

A. Sewing the pockets.

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[1012] GRACE HIGGINS.

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[1015] Q. (By Mr. Thompson) All right, let's take those one by one, Mrs. Higgins. What do you mean by very bad work?

A. Well, she just didn't do the work properly for it to fit in the garment. She sewed darts on the wrong side. She mixed linings.

Q. What do you mean by mixing linings?

A. Well, when we get the linings, they are cut in pairs. The linings are shaded. If you happen to get one lining out of line, it throws the whole bundle off. The right side, or maybe the left, would be a different color from the other side.

Q. What do you mean would be a different color from what?

A. Well, in navy we have shaded colors, different shades of navy; different shades of gray.

Q. On a particular coat, what colors would differ?

[1016] A. Well, in a navy coat, it would be a different shade of navy, and different on the other.

Q. (By Trial Examiner) Would that different shade be because the cloth was in a different direction; is that right?

A. That she picked it up wrong.

Q. It would be the same cloth, but fitted in a different direction, and therefore it would be a different sheen.

A. Yes. She sewed the darts on the wrong side of the material.

Q. (By Mr. Thompson) What do you mean by the wrong side? Do you mean the wrong side of the coat, or the wrong side of the cloth that she was sewing on?

A. Wrong side of the cloth that she was sewing on—a right and wrong to it.

Q. Now what effect, if any, did that have upon the next operation?

A. The girls couldn't put the pocket in, because the dart would be on the wrong side. We would have to send it back to her.

Q. How did you discover these defects that you described?

A. What the girls didn't discover, I did, in checking her work.

Q. What happened, if anything, when the girls discovered them?

A. They would call me over and tell me the darts were on the [1017] wrong side.

Q. Who were these girls you are talking about?

A. Imogene Meeks and Odelle Barnes.

Q. What jobs were Imogene Meeks and Odelle Barnes doing?

A. Setting inside breast pockets.

Q. Was there any difference between Lucille Yancey's operation, and the operation of those two girls?

A. No.

Q. Did anybody else do the work that you described Lucille Yancey as doing at the time she was doing the work?

A. No. Lucille was the only one on the job during that time.

Q. Will you state, please, ma'am, exactly what Lucille Yancey was supposed to do in her operation at the time she was working under you?

A. Well, we get the facings that is made of the material of the coat, and are numbered. Each pair has the same number, the lining, and she is to sew the same numbers to the same two linings and put—and she was to put fullness into the same two parts, which she never did.

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[1018] Q. Now, what do you mean when you say that Mrs. Yancey was uncooperative? Will you tell us what exactly you refer to, there?

A. She did not want to take instructions at all.

[1019] Q. Would you be a little more particular about it? Tell us what you said to her, and what she said to you, and what took place.

A. Well, when I would go to her and check with the work and try to tell her how to do it, she would say, "Now,

listen; you have got to make it a little easier on us, around here." And she was never satisfied. She always wanted the linings cut an inch longer, where she could sew them in as she pleased. It didn't matter if it was too much, or not, and we are only supposed to have a certain amount.

Q. How often did this happen?

A. Quite often.

Q. (By Trial Examiner) How often is quite often?

A. Every day.

Q. (By Mr. Thompson) How long a period of time did it cover?

A. Eight hours.

Q. In a period of weeks and months, what period of time did it cover?

A. The full amount that she stayed there.

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Q. (By Mr. Thompson) The question, Mrs. Higgins, is were [1020] there any other factors, other than the ones you have related, which entered into the discharge of Lucille Yancey?

A. Well, she didn't do production.

Q. What do you mean by that?

A. She didn't come up to the production that we required, in the operation.

Q. Mrs. Higgins, what is make-up pay?

A. Make-up pay is, the girls cut tickets, and if they don't get enough to make up for a dollar an hour, that's called make-up pay.

Q. How do you compute the make-up pay of an employee? What would determine the make-up pay of an employee at this plant?

A. I don't know.

Q. Did Lucille Yancey have make-up pay?

A. Yes.

Q. Now how would you know whether or not she had make-up pay?

A. Because I checked her record. Not every day, but most of the days we would check their records.

Q. After Lucille Yancey left the company, who took over her operation?

A. Elizabeth Johnson.

Q. And what was your experience with Elizabeth Johnson with respect to the type of work that she did?

A. I don't quite understand that question.

Q. You described the work that Lucille Yancey did. What was [1021] the experience that you had with Elizabeth Johnson concerning the quality of the work that she did?

A. Elizabeth was some better. She had some poor work, but she did better work than Lucille Yancey.

Q. And how long did Elizabeth do this work?

A. Around six weeks.

Q. And after Elizabeth was taken off of that job, who did the work that Lucille had done?

A. We put that in with the pocket girls; Imogene Meeks and Odelle Barnes.

Q. Now who did the work that Imogene Meeks and Odelle Barnes had done prior to that time, after you gave them the work of Lucille Yancey?

A. They do that now. Both jobs.

Q. What has been your experience with the work that Odelle Barnes and Imogene Meeks have done since

they took over the work of Lucille Yancey's, with respect to quality?

Mr. Sheinkman: I object.

Trial Examiner: Sustained.

Q. (By Mr. Thompson) Mrs. Higgins, do Odelle Barnes and Imogene Meeks, turn out better or worse work, quality-wise, than Lucille Yancey did?

A. They turn out—

Mr. Sheinkman: Object to the question.

Trial Examiner: Sustained.

[1022] Mr. Thompson: Mr. Examiner, I offer to prove by this witness that the two girls which are now doing not only their own work, but the work that Lucille Yancey was doing, on the combined basis, do better work, make fewer mistakes, and she has less complaints and less defective work than she had at the time that Lucille Yancey was there. That's what I am attempting to prove by these questions.

Trial Examiner: The offer of proof is rejected. It is not material whether the other girls do better work than Lucille Yancey. The only issue in this case is whether Lucille Yancey was fired for defective work, and whether another girl can do the work better than Lucille Yancey is not an issue in this case. For that reason I have overruled the question that you have asked, and don't consider this testimony material.

Mr. Thompson: In order that there will be no question as to our position, it is our contention that this is an issue in the case, and that it is material to show that this woman, Lucille Yancey, was an incompetent employee,

and that once competent employees were put on the job, they had no trouble whatsoever of turning out the work which she was doing, along with the work that they were doing at that time.

Trial Examiner: I have your offer of proof and I have ruled.

Q. (By Mr. Thompson) Mrs. Higgins, did you ever have an [1023] employee by the name of Pearl Coker under your supervision?

Trial Examiner: Mrs. Higgins—excuse me, Mr. Thompson; I would like to ask a question.

Mr. Thompson: Yes, sir.

Q. (By Trial Examiner) You testified before you also had trouble with Lucille Yancey because she was unruly. Now you haven't explained to us yet, at least I haven't heard the explanation yet, as to what you meant by the fact that Lucille Yancey was unruly.

A. Do you want me to explain that?

Q. Yes, ma'am.

A. Well, she was just unruly. She just wouldn't take instructions.

Q. Do you mean by unruly, that she wouldn't take instructions, or that she was making commotions in the plant, or what?

A. No; she wasn't making commotions in the plant. She was fussing at other girls. And at me, she was always complaining about her machine, and I was—

Q. Just what do you mean by "—fussing at other girls"?

A. Complaining about that I couldn't give instructions. That they would never do the work to please me.

She complained about her machine, which I was to sit down and try. I never had any trouble when I would sit down. And then when she would get back to the machine, it would go to doing bad again.

[1024] Q. And that's what you call unruly?

A. Yes.

Q. (By Mr. Thompson) How frequently did that take place during the time she was under your supervision?

A. Just about every day. It was just a complaint all the time.

Q. (By Trial Examiner) And that was throughout the period from July until December; is that right?

A. Yes.

* * * * * * *

Q. What do you mean, she was under make-up?

A. She was in make-up. She didn't make a minimum of a dollar an hour.

Q. Now if she was under make-up, did she make her production?

[1025] A. No.

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[1026] Q. In what way was it not satisfactory?

A. She didn't set the collar properly.

Q. What were the factors that led you to the conclusion that she didn't set the collar properly?

A. She didn't get the fullness in the right place.

Q. And who discovered these defects?

A. I did.

Q. What did you do when you discovered them?

A. We just had to do it all over again.

Q. And who would be responsible? Who did it all over again?

A. Pearl did.

Q. Did you ever talk to Pearl about the quality of her work?

[1027] A. Yes.

Q. Did you do this more than once?

A. Yes.

Q. About how many times, or how frequently, did you talk to her about the quality of her work?

A. Once a week.

Q. Over what period of time did you do this once a week?

A. The full time that she stayed there.

Q. Did you ever have any conversations with her concerning her make-up?

A. Yes.

Q. How frequently did you have those conversations?

A. Well, when I would talk to her about her quality, that was including her make-up; because if she didn't do her production, well, that was make-up.

Q. (By Trial Examiner) How long did Pearl Coker work under your supervision?

A. She worked for me from the latter part of June, or first of July, until January.

Q. About six months. And you had this trouble with her right along; is that right?

A. Yes.

Q. And you spoke to her about it right along.

A. Yes.

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[1028] Q. What other work did they do?

A. Partain was the utility girl. Hester Lou McCart sewed side seams when she would catch up; sewed pocket vents. And the same thing with Louise Sammons.

Q. Mrs. Higgins, were there any factors which were taken into consideration in deciding to retain Mary Lou Partain, as opposed to Pearl Coker?

A. Yes.

Q. What were those factors?

A. Because Mary Lou Partain's work was satisfactory. And she could do more operations than Pearl. Pearl only set collars.

[1029] Q. Is Mary Lou Partain still there?

A. No.

Q. Where is she?

A. She quit.

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[1031] Q. (By Mr. Thompson) Now, do you know about when Frances Elizabeth Johnson was laid off?

[1032] A. January.

Q. Do you know what part of January it was?

A. Latter part of January.

Q. Was anybody else laid off from your department at the same time that Frances Elizabeth Johnson was laid off?

A. Mary Barnes.

Q. Anyone else, that you recall?

A. I don't recall anyone, right now.

Q. (By Trial Examiner) Mrs. Higgins, did Frances Elizabeth Johnson work for you sewing facings to the lin-

ings for the period from December 1957 when Lucille Yancey was discharged, up to the time she was laid off at the end of January?

A. Yes, sir.

Q. Did she work in any other department, other than your department during that six weeks, or approximately six weeks period?

A. No.

Q. And did she do only facings, sewing facings to linings during that six weeks period?

A. That's all.

Q. And then when she left your supervision she did not go to work in any other section; is that correct?

A. No.

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[1034] Q. What do you mean by poor quality?

A. She didn't do the facings, put the fullness in the right places. But her quality was better than Lucille's.

Q. At the time Frances Elizabeth Johnson was doing this work, would you have—which you have described, under your supervision, was she paid on a piece rate, or was she paid in some other manner?

A. She was held to the average that she was making in the other section before she came over with me.

Q. What do you mean by that?

A. If she was making $1.10 an hour in the other section, we held her to $1.10 an hour until she could learn the operation. And she was still on that average when she left.

Q. (By Trial Examiner) How long does it normally take to learn the operation?

A. I would say six weeks.

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[1038] Q. Do you recall whether or not she had any make-up pay during the time she was under your supervision?

A. Yes; she did.

Q. How frequently did she have make-up pay?

A. She had it quite often. It all depended on how the work was.

Mr. Sheinkman: How the work what?

The Witness: How the work was.

Q. (By Trial Examiner) What do you mean by the fact that you said in response to Mr. Thompson's question that she made production?

A. She did make production part of the time, and part of the time she didn't.

Q. (By Mr. Thompson) Mrs. Higgins, during the weeks that Evelyn Hudson had make-up pay, did she make production?

A. No.

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[1039] Q. (By Mr. Thompson) Mrs. Higgins, I hand you a document which has been introduced in evidence and received, which is marked General Counsel's Exhibit 5, and ask you if you ever saw that letter posted on the bulletin board at the plant, or a copy of that letter posted on the bulletin board at the plant.

A. Yes.

Q. Approximately when did you and Mr. "Murph" discuss the prospects of laying off some of the people in your department?

A. Do you mean how long before—

Q. Over what period of time prior to the lay-off?

A. I would say two or three weeks before.

Q. Mrs. Higgins, did the fact that some of the people who were laid off from your department names appeared on that letter, which is General Counsel's Exhibit 5, have anything to do with whether you decided to lay them off?

A. No.

Q. Mrs. Higgins, did Pearl Coker ever tell you that she had attended a union meeting?

A. Yes.

Q. Do you remember about when she told you that?

[1040] A. No.

Q. Do you remember what month it took place in; or about what month it took place in?

A. Around the latter part of November or first of December.

Q. What did you say—tell us what she said, and then what you said.

A. She had told me that she had attended a meeting that—the night before, and I didn't make a reply.

Q. Did you say anything to her about who was there that would want a union?

A. No.

Q. Did you say anything to her about the Sharffs stating, in a supervisors' meeting, that they would close their doors before they would work a union?

A. No.

Q. Did you ever attend a supervisors' meeting where the Sharffs made such a statement?

A. No.

Q. Or any of the Sharffs made such a statement?

A. No.

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[1042] Q. Are you familiar with whether or not Evelyn Hudson had any make-up pay during that second period of her employment?

A. Yes.

[1043] Q. Did she or did she not have make-up pay?

A. She continued to have make-up pay.

Q. How frequently did she have make-up pay?

A. Continually.

Q. What do you mean by continually?

A. She didn't never make more than 40 or 50% when she came back on this operation.

Q. 40 or 50% of what?

A. Of her production.

(Short recess.)

Trial Examiner: You may resume.

Q. (By Mr. Thompson) Are you familiar with whether or not Regina Hall made her production during the nine-week period when she was doing the same operation that Evelyn Hudson was doing?

A. Yes.

Q. Did she, or did she not, make her production?

A. She did.

Q. How regularly did she make her production?

Trial Examiner: What is the materiality of this testimony, Mr. Thompson?

Mr. Thompson: Mr. Examiner, the complaint alleges that Evelyn Hudson was discharged, and we continued

for a period of time to re-employ her. We did re-employ her, and then we discriminated against her again.

Trial Examiner: There is an allegation—I wasn't aware [1044] of the fact that she was discriminated against twice.

Mr. Joy: No, sir.

Mr. Thompson: If that is not the contention of General Counsel, then I won't pursue this further. It was my understanding that he was contending that.

Trial Examiner: I didn't understand it that way, and that's the reason I was a little bit puzzled by your questions.

Mr. Joy: There is no allegation of discrimination in the second discharge. That was not covered by the case at the time. I did take the position the other day that she was not reinstated to the same job from which she had been discharged, or laid off originally, a matter running perhaps to back pay, if any is involved. But it did not go into the subsequent merits of that.

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[1045] Q. (By Mr. Thompson) Mrs. Higgins, did Evelyn Hudson ever make a statement to you after her re-employment that she was put on that job in order to get rid of her?

A. No.

Q. Did she ever make any statement anything like that to you?

A. No.

Mr. Thompson: No further questions of this witness.

Q. (By Trial Examiner) Mrs. Higgins, on the day that Evelyn Hudson was discharged the first time, or laid off the first time, were you present?

A. Yes.

Q. But you didn't tell her she was laid off?

A. No, I didn't.

Q. "Murph" did that.

A. Yes.

Q. But on the day Frances Elizabeth Johnson was laid off, you were out sick; is that right?

A. Yes.

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[1047] Q. When she was doing repair work, was that time counted separately? Did she get paid on an hourly basis, or did that just run along with her total time, and reduce the amount of production?

A. It went along with her own time. I ripped, helped her rip plenty of work. Helped out to keep the line from going so slow.

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[1048] Q. Isn't it a fact that she made production most of the time?

A. No.

Q. You are sure of that?

A. Yes.

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Q. But after she was put on production, she never made production; is that right?

A. She did, at times.

Q. (By Trial Examiner) How often did she make production? Once in two weeks; once in four weeks?

A. Well, I can't recall the number of times.

Q. Twice—you don't recall how often she made production?

A. She would make it, maybe today, and tomorrow she wouldn't.

[1049] Q. Don't you figure production by the week?

A. We figure it by the day. I do.

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[1052] Q. If it was easier for her to sew on, would that not have increased the quality and production?

A. It would have increased production. It wouldn't have increased quality; no.

Q. Why not?

A. Because we didn't need that much fullness in the lining.

Q. Now did you mean to say that every day over the six-month period that you had that discussion with her about wanting the lining cut an inch longer?

A. No.

Q. What did you mean when you said every day?

A. I said every day that I had to talk to her about her bad work.

Q. And how often did that—was that?

A. Every day.

Q. You are right back to every day. That you had to talk to her about bad work every day.

A. I would say yes; every day.

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Q. (By Mr. Joy) Now in discussing the collar work, you stated that Mary Lou Partain's work was satisfactory on that Was that satisfactory as to quantity?

A. No. It was quality.

Q. As a matter of fact, she was the slowest operator of the [1053] section, wasn't she?

A. No.

Q. Who was the slowest?

A. She was called a utility girl, so we didn't expect as much out of her as one with a regular job.

Trial Examiner: Is that Mary Lou Partain you are talking about?

The Witness: Yes.

Q. (By Mr. Joy) Was she paid—As a utility girl, was she paid by piece work, or was she paid on a time basis?

A. She was paid on a time basis.

Q. We are referring, now, to the time that Pearl Coker was employed there. Was Mary Lou Partain paid on a time basis then, or a piece basis?

A. Well, I would say this: That she was paid part of the time—the first part of the time she worked there, she wasn't a utility girl, but then we later made her into one.

Q. That was after Pearl Coker had been terminated, was it not?

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[1054] Q. (By Mr. Joy) Now referring to the time before she was made a utility girl, was she not the slowest operator in the collar section?

A. I wouldn't say she was the slowest. She was on the average of Pearl.

Q. Did she have more or less make-up than Pearl?

A. They were on about the same.

Q. Very close?

A. I would say very close.

Q. Was it not a fact that she had more make-up than Pearl did; regularly?

A. Repeat that again, please.

Q. I say, wasn't it a fact that Mary Lou Partain had more make-up than Pearl Coker did, regularly?

A. No.

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[1061] Q. You never told that to Lucille Yancey; that if she didn't improve, she would be laid off or discharged?

A. I did to Mrs. Yancey; yes.

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[1063] Q. Did you have any supervisors' meetings?

A. Yes.

Q. Regularly?

A. No.

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Q. Did you ever discuss the union with any of your supervisors?

A. No.

Q. You never discussed the union.

A. No.

Q. Did you ever discuss the union with Mr. Morris Sharff?

A. No.

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Q. Were you ever told by any of your supervisors not to say [1064] anything about the union?

A. No.

Q. Now on that day that you spoke to Coker—or, rather, Coker spoke to you about the union, am I to understand she just asked you a question and you didn't pursue it any further?

A. She didn't ask a question. She just told me.

Q. And what did you say? Nothing?

A. I didn't make any reply.

Q. When she spoke to you, did you usually not answer her?

A. No; I always answered. I just didn't—

Q. You had a friendly relationship with her, didn't you?

A. Yes, sir; at times.

Q. And you discussed other things, didn't you?

A. Yes.

Q. And usually when she started a conversation, you would reply; is that right?

A. Yes.

Q. Why didn't you reply this time?

A. Because I didn't want to.

Q. Nobody told you not to reply; is that the reason?

A. I just didn't want to. I just didn't make a reply.

Q. You weren't concerned about the union; is that right?

A. I knew it was trying—was being around: yes.

Q. Didn't you know that Morris Sharff was against the union?

A. No; I didn't know.

[1065] Q. You didn't hear him make a speech in the plant against the union?

A. No.

Q. Were you present in the plant when Morris Sharff made a speech about the union?

A. No.

Q. You weren't in the plant.

A. I heard him make a speech, but I didn't hear him state that.

Q. Did he speak for the union at that time?

A. I don't recall too much that was in the speech.

Q. Do you recall anything that was in the speech?

A. Well, he told us that he was down as our friends; he wanted to help us.

Q. Did he speak against the union? Did he say—

Trial Examiner: Let her finish the answer. Don't interrupt the answer. Go on and tell us what else you remember about the speech.

A. (Continuing) And he told us he wasn't a part of the company. He was just an advisor.

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[1066] Q. Would you say that the speech was primarily about the question of union, or not?

A. No.

Q. You think the speech was primarily not about the union. Is that the way I understand?

A. Not about the union.

Q. (By Mr. Sheinkman) Was the supervisors' meeting before or after he made the speech?

A. The supervisors' meeting was just before Christmas.

Q. Wasn't the speech made in early December?

A. I don't recall just the time that it was made.

Q. I will ask you again, do you recall whether or not your supervisor's meeting was before or after this speech?

A. I don't recall just the time it was. It was just before Chrismas, when we discussed our Christmas bonus.

Q. Did you ever discuss the question of the union with any other supervisors?

A. No.

Q. Not at all; ever.

[1067] A. No.

Q. Did you ever discuss it with any workers in the plant?

A. No.

* * * * * * *

[1072] Q. Now when was the first discussion about her discharge, rather than about her work?

A. Two or three weeks, I would say, before.

Q. Two or three weeks before she was discharged was the first time you discussed with Mr. "Murph" the question of discharge; is that right?

A. I would say no. I will explain it like this: The full time after we got started, that we were there, it was a matter whether I kept her, or not. For she was very uncooperative. And it just got to the point that I couldn't take it any longer.

* * * * * * *

[1073] Q. (By Mr. Thompson) Are mistakes made as frequently as you have described Lucille Yancey making mistakes? Regular thing—

A. Regular—

Q. (Continuing)—in the garment business?

A. No.

[1074] Q. Are they a regular thing in this plant?

A. We make them occasionally now, but not like we did then.

Q. Is the frequency and the volume of mistakes that she made a matter of general practice? Were her mistakes any more than normal?

A. Yes.

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[1075] JERRY CARTER.

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[1078] Q. Which was she; laid off or discharged?

A. She was laid off.

* * * * * * *

[1080] Q. What were the—Do you know the factors which were taken into consideration?

A. Yes, sir.

Q. Leading to her lay-off?

A. Yes, sir.

Q. What were those factors?

A. Well, it was just like any other case. There just wasn't enough work for them to do, and we have to—we had to give that work to the girl that was making the flaps.

* * * * * * *

[1087] The Witness: Doris Haulk.

Q. (By Mr. Thompson) Who, if anybody, is doing the job that Nellie Hood did when she was there? In other words, who is your Nellie Hood now?

A. I am my Nellie Hood!

Q. Has anyone replaced Nellie Hood and taken over the job that she did before you laid her off?

A. No, sir.

* * * * * * *

[1091] Trial Examiner: Made and sewed down vents.

Q. (By Mr. Thompson) Mr. Carter, after Lucille Griffith was laid off, who took over her work? The work that she was doing?

[1092] A. No one.

Q. What became of it?

A. Well, you see we have four pocket girls, and the ones we kept, they did her work.

Q. What were the factors which led to the decision to terminate Lucille Griffith?

A. Just poor quality.

* * * * * * *

[1096] Q. Did you ever say anything to Frances Elizabeth Johnson about union people riding around in big cars?

A. I don't remember if that was the exact words, but I believe I do remember saying something to that effect.

Q. Approximately what did you say? Tell us as near as you can what you said.

A. I probably said that all I knew about the union is that I see them driving around in big automobiles.

Q. Was anything else said—

Trial Examiner: Union drives around in big automobiles; union organizers drive around in big automobiles?

The Witness: Folks; I believe I said union folks. I don't remember exactly, but that, I believe, was the substance of it.

* * * * * * *

Q. What did she say?

A. She said she didn't know anything.

Q. What else was said?

A. That was all that was said.

* * * * * * *

[1097] Q. Was there anything else said at that time?

A. No, sir.

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Q. Was there anything else said between you and Nellie Hood, other than what you have just related, about saying she told you a story?

A. That's all.

Q. What happened when you said that?

A. She just laughed, and turned and went on.

* * * * * * *

[1100] Q. (By Mr. Joy) Did Margaret Britt ever try out on Violet Ewing's job?

A. Yes, sir.

Q. You testified a while ago that after Violet Ewing was laid off, Margaret Britt performed her work. Did she perform all of Violet Ewing's work and all of her own work?

A. Yes, sir.

Q. No help?

A. No help. She did all of it.

* * * * * * *

[1102] Q. Do you remember whether the discussion with Mr. "Murph" preceded, or was close to the lay-off, or was far back from the lay-off; do you remember?

A. He talked to me the day that they were laid off.

Q. Is that the first time he talked to you?

A. No; he had discussed it previously.

Q. How long belore; do you know?

A. Oh, I would say a couple of weeks.

Q. (By Trial Examiner) What did he say to you at that time? When you discussed it, a couple weeks prior to the lay-off?

A. Well, we just talked about the quality and—

Q. No. Just what did Mr. "Murph" tell you at that time? You say you discussed the lay-off. Now just what did he tell you at that time?

[1103] A. Well, he told us that we were having a reduction in our work, and there were some of them that we were going to have to cut some out.

Q. What else did he say?

Mr. Thompson: Mr. Examiner, I object to the interruption of the witness. He is trying to explain what was said.

Trial Examiner: Your objection is overruled.

Q. (By Trial Examiner) What else did he say?

A. I don't remember just what else he said. That was all that he said. We just talked about the different, various girls' quality, and where in spots that we would have to cut back.

Q. Now who first mentioned Bonnie Hamilton? Did Mr. "Murph" first mention Bonnie Hamilton, or did you?

A. I think it was myself that mentioned Bonnie Hamilton.

Q. As a person to be laid off?

A. Yes.

Q. And who first mentioned Violet Ewing?

A. It was myself.

* * * * * * *

[1104] Q. Just what did he say about reduction in force?

A. He just simply stated that we were—our work was being cut, and we had to reduce some of our employees.

Q. Did he say how many you should recommend for reduction?

A. No.

Q. These names that you suggested, the two names that you suggested, did you tell Mr. "Murph" you could get along without [1105] those two girls?

A. I told him that I thought with the help we had, that we could keep up all right with what we had to do; and that we could get along without them; yes, sir.

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Q. You felt like you could get by with six fewer employees?

A. That's right, sir.

Q. And you were the one that suggested five out of six names; is that it?

A. Yes, sir.

Q. (By Mr. Sheinkman) Did you ever discuss the question of lay-off with Morris Sharff?

A. Mr. Morris?

Q. Yes; Mr. Morris. Do you remember you testified before you asked Nellie Hood what she knew about the union; is that right?

A. Yes.

Q. What prompted you to ask her that question?

A. I was just asking her a question. I meant by that was she—

[1106] Q. I just asked you that.

Mr. Thompson: Mr. Examiner, the witness was asked for his motivations and he is attempting to explain his motivations. He is certainly entitled to explain his answer to the question, and I request he be permitted to do so.

Trial Examiner: He will be permitted to do so. What were you going to say?

The Witness: I was just going to say what I meant by that was did she think it was a favorable thing, or unfavorable thing.

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[1108] Q. Mr. Carter, did the fact that some of the people who were laid off from your department's names appeared on General Counsel's Exhibit 5 have any effect, or was it taken into consideration, in making your decision over who should be laid off?

A. Not whatsoever.

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[1109] EDNA ATHA.

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[1111] Q. (By Mr. Thompson) Was there any rule at the Loganville Pants Company plant concerning talking during working hours?

A. Well, the employees weren't supposed to talk during working hours very much. That would slow the work down. They weren't supposed to talk during working hours.

Q. Was there any rule concerning the subject matter over which they were permitted to talk during working hours? Were they confined to any particular subjects that they could talk about?

A. No.

Q. Were they told, as far as you know, that they were not [1112] to talk about any particular subject?

Mr. Sheinkman: I object to the form of the question.

Trial Examiner: I see nothing objectionable.

Mr. Sheinkman: He is leading the witness.

Trial Examiner: I don't see that it is leading. Overruled.

Q. (By Mr. Thompson) Mrs. Atha, do you know whether or not there was any rule at any time while you were employed at the Loganville Pants Company concerning whether or not the employees were permitted to talk during the lunch hour and during the break periods?

A. No.

Q. Are you saying there was no such rule, or are you saying you know of no such rule?

A. I know of no such rule.

Q. Do you know whether or not—

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Q. Was there any rule at the Loganville Pants Company prohibiting employees from discussing any particular subject during their lunch hour or while they were on breaks?

[1113] A. No. I know of no such rule.

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Q. (By Mr. Thompson) Were the employees at the Loganville Pants Company ever instructed that they were not to discuss the unions on company property, so far as you know?

A. No, I didn't ever hear of such rule.

Q. (By Trial Examiner) What rule was there, Mrs. Atha, regarding talking at the plant? Tell me all the rules that there were regarding that there were regarding talking.

A. Well, when a girl is working she is not supposed to be talking.

Q. So that you had a rule against talking while working.

A. Well, they could speak. Sure, they could speak. But not continuously talking while working during working hours.

Q. Now you say that that was a rule. Was this rule put up on the bulletin board, or given to the employees, or how did the employees find out about this rule?

A. Well, Mr. Hughley would tell me the girls were talking too much during working hours. They would have to not talk so much, and not work—I mean, and work.

Q. This was an individual thing from time to time that he would call to your attention.

A. Yes.

Q. There was no rule on the bulletin board, was there, saying [1114] that you couldn't talk while you were working?

A. No.

Q. Were there any rules posted on the bulletin board?

A. No.

Q. Was there any book of rules, or any instructions given to any employees when they were hired, as to their conduct in the plant?

A. No.

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[1116] Q. Did you ask all the girls that question?

A. No.

Q. Were you acting on any instructions from Mr. Hughley, or anyone else, in asking that question?

A. No.

Q. Did you ever discuss unions again with the people you had asked the question?

A. No.

Q. Do you recall an employee at the Loganville Pants Company by the name of Lela Beaver?

A. Yes.

Q. What work did Lela Beaver do?

A. She set flys.

* * * * * * *

[1117] Q. (By Mr. Thompson) Mrs. Atha, did you have anything to do with the training of Lela Beaver?

A. Yes.

Q. What period of time did you spend training her?

A. Well, about four weeks.

Q. Did you train any of the other girls?

A. The period of training of Lela Beaver?

Q. Yes.

A. Yes. About four weeks.

Q. Did you train any of the other girls who were employed by Loganville Pants Company?

A. Yes.

Q. From your experience in training these personnel, did Lela Beaver develop her skills at the same pace, or at a satisfactory pace to the other girls that you trained?

A. No.

Q. What was the experience there?

A. Lela Beaver was slow in learning.

Q. Now were you employed at the Loganville Pants Company at the time the operation of that company was discontinued?

A. Yes.

Q. Was Lela Beaver employed there at that time?

A. Yes.

Q. What became of the employees? What was done with the employees of the Loganville Pants Company at the time the company [1118] ceased operation?

A. Well, we had to lay the girls off.

Q. Did you lay them all off, or—

A. The ones we couldn't use.

* * * * * * *

[1119] Q. Did you ever make—do you recall ever making a statement to Lela Beaver to the effect that the plant might get more work if the union would ever leave them alone?

A. No.

Q. Did you ever make such a statement?

A. No.

Q. (The Trial Examiner) Did you make any statement about the union to Lela Beaver?

A. No.

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[1121] Q. What did you say?

A. And she said, "I'm afraid I am going to lose my job. I don't want to lose my job. I have two children to support." And I said, "Well, don't worry about it."

Q. Was there anything else said?

A. No.

Q. Did you ever have any other discussion about Pauline Spratlin about unions?

A. No.

Q. Did you ever have any discussion with Nellie Wood about unions?

A. No.

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[1125] Q. With respect to Lela Beaver, you said she was slow in learning. Was she not one of the better ones, as far as make-up was concerned?

A. No.

Q. Did she have make-up?

A. I don't know how much make-up.

Q. You don't know how much any of them had?

A. No; I don't know how much any of them had.

Q. So far as you know, did any of them make production and not have make-up?

A. Well, I know of one girl that had—made production.

Q. Who was that?

A. Vada Simpson. The rest of them had make-up, and I don't know how much.

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[1131] Q. Well, had you heard any talk about the union before you asked her that question?

A. Yes.

Q. Where had you heard talk about the union?

A. Some of the girls were telling me about having visitors.

Q. I see. And after she answered the question, what else did you say to her? Nothing?

A. No.

Q. After you asked Nancy Williams the question, you didn't say anything else either.

A. No.

Q. And you say you asked the other girls. You asked no other questions other than that one question.

A. No.

Q. What was your purpose for asking the other girls when you don't remember this question? Do you remember? Just conversation?

A. Yes.

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[1133] Q. Do you remember asking a question of Lela Beaver what Nellie Wood was doing talking to her? Is that right? When you saw Nellie Wood talking to Lela Beaver.

A. No; not to Lela Beaver.

Q. Pauline Spratlin. Excuse me. Is that right?

A. Yes.

Q. Was this unusual for Nellie Wood to be talking to Pauline Spratlin?

A. Well, when a girl that didn't work there, from another plant came in, that's why I asked her. She just walked—

Q. She just walked into the plant? Nellie Wood?

A. Yes.

Q. Do you remember when this was?

A. No.

Q. Wasn't this during lunch hour?

A. Yes.

Q. Is it unusual for a girl from Walton to come over to the plant of Loganville during lunch hour?

[1134] A. It is unusual?

Q. Yes.

A. If a girl comes up there, I am supposed to find out what they are doing there. If an outsider comes in.

Q. Hadn't you seen Nellie Wood in the plant before?

A. Yes.

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[1145] I. S. PROSTERMAN.

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[1148] A. She didn't do her work correctly. The finished product, after it left her hand, was not correctly sewed.

Q. What portion of the coat did Lucille Yancey at that time sew?

A. She sewed the lining to the facing.

Q. And what was it about the sewing of the lining to the facing that she was not doing properly?

A. She was unable to distribute her fullness properly.

Q. Were there any other factors which led to the conclusion that she was not doing her work with proper quality?

A. Additional other factors?

Trial Examiner: Any factors.

A. Additional quality factors were errors in joining of her linings. She would sew the wrong lining to the wrong facing, occasionally. Other factors were that because of the fact she was unable to produce the quality

work that we required, and she was unable to make her minimum. In other words, she had make-up, to a great degree, and we were unable to bring her to a satisfactory production status with the proper quality at the same time.

Q. Now did you ever discuss this with her supervisor?

A. Yes.

[1149] Q. Did you have, in the regular course of your business, any reports from her supervisor, concerning the work of Lucille Yancey?

A. Yes.

Q. And what were those reports?

A. That her work was bad. That she was unable to correct this girl. That she had corrected this girl, but that the operator was unable to perform properly.

* * * * * * *

[1152] Q. And what did you do, if anything, preparatory to the layoff?

A. Well, the first thing I did was to discuss this matter with Mr. Morris regarding the extent—

Q. Mr. Morris Sharff?

A. Mr. Morris Sharff. (Continuing) —regarding the extent of the curtailment of production that would be required. Then, having received from him an approximation of this figure—

Q. And was—what was the approximation?

A. The approximation was a curtailment from approximately 450 garments a day to approximately 300 garments a day.

Q. All right, sir. What else did you do, if anything?

A. I took down the list of all of my operatiors, by sections, and started to determine in my own mind and by

individual consultation with various supervisors and my own observation of these operators, which operators I would like to retain and which I thought would be released.

Q. When you say "individual consultation with supervisors," did you meet with the supervisors in meetings, or did you meet with them individually?

A. Well, actually, I can't say I met with them. I engaged [1153] them in discussions at various times regarding certain operators.

Q. Now what period of time did this take place?

A. Well, I would say approximately early December, as I have stated before, oh, up until the time of the lay-off, or shortly before.

Q. Mr. Prosterman, I hand you a document which has been received in evidence as General Counsel's Exhibit No. 19. I will ask you if you will identify that exhibit for us, please, sir.

A. Yes. These are my preliminary notes that I made preparatory to determining the extent of the lay-off, and who should be laid off. And I believe also tentative recommendations.

Q. When were those drawn up?

A. That's in December.

Q. What did you use those notes for? What were they for?

A. They are merely as a guide to final conclusions.

Q. Conclusions toward what?

A. Toward who should be laid off and who should be retained.

* * * * * * *

[1155] Q. (By Mr. Thompson) Mr. Prosterman, in arriving at your determination as to which employee should be laid off, was any consideration given to the make-up of employees who were doing different jobs than the one that was under consideration?

A. No, sir.

Q. Mr. Prosterman, in arriving at your decision as to which [1156] employee would be laid off and which retained, was it done on a plant-wide basis, or was it done on a departmental basis, or was it done on a job basis, or what exactly was the limitation of your consideration in comparing employees?

A. I would say it was done on a section basis, wherever possible, because we find that in various situations there were operators within a section, though performing different operations in that section, were capable of assuming each other's operations. Therefore, I say in most cases it was on a sectional basis; within the section.

Q. Now in reaching this determination, did you give consideration to other workers, or other jobs outside the sections?

A. No.

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[1179] Q. What was the nature of the bad work that you refer to?

A. The nature of the bad work: She left holes open on the under-collar; failed to fell them down completely to the coat. Failed to distribute the fullness of the under-collar properly.

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[1181] Q. (By Mr. Thompson) Who fired Pearl Coker?

A. I did.

Q. Are you familiar with Pearl Coker's record on make-up pay?

A. Yes, sir; I am.

Q. Are you familiar with Hester Lou McCart's record on make-up?

A. Yes, sir; I am.

Q. Was there any comparison between the make-up of those two people involving the lay-off or the discharge of Pearl Coker?

A. Well, the comparison was that Hester Lou McCart had no make-up. In fact she had a very good earning record; production record; whereas Pearl Coker was constantly on make-up.

Q. (By Trial Examiner) Was make-up a factor in discharging Pearl Coker?

A. Yes, sir; it was.

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[1184] Q. Was Bonnie Hamilton laid off or discharged?

A. She was laid off.

Q. When was she laid off?

A. January 31st.

Q. Of what year?

A. 1958.

Q. And what were the factors which led to her lay-off?

A. Well, I was required to cut the production of the section and I determined that Lucille Yancey was the one

best qualified and the most competent. And therefore I laid off Bonnie Hamilton.

* * * * * * *

[1188] A. Well, Charlotte Finley had done this work previously. The only training she required was not to learn the operation, but to gather speed.

Q. (By Trial Examiner) What kind of training does that require, other than practice?

A. Just time; that's all.

Q. In other words, Geneva Harris was just helping her make up some production she couldn't keep up with; is that right?

A. That is correct.

Q. (By Mr. Thompson) Now is Geneva Harris still helping her keep it up?

A. Since that time that particular operation was eliminated.

Q. Which operation?

A. Bottom hem basting was eliminated. A short time thereafter. Within a matter of weeks.

Q. Who does bottom hem basting now?

A. This operation is now being combined with the edge basting operation.

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[1203] Q. (By Mr. Thompson) Is flap making a mechanical operation?

A. Flap making is definitely not a mechanical operation.

Q. Is there anybody in the plant now who is spending most of her time sewing on pocket facings?

[1204] A. No. I would consider that particular job approximately a 3 1/2 to 4 hour a day job.

Q. (By Trial Examiner) Which is a 3 1/2 to 4 hour a day job?

A. The sewing of pocket facings.

Q. The person that is sewing pocket facings now, what else is she doing?

A. She does a variety of other jobs on collars.

Q. What sort of jobs?

A. Well, she joins the—

Q. Mechanical operations, or—

A. Mechanical, mostly.

Q. Simple jobs.

A. One of her jobs is a simple job and the other job is not so simple. Would you like me to name these jobs?

Q. Please.

A. She joins the under-collar seam. This is done with a plain sewer and a cutting attachment. Fairly simple job. She bastes the collar edge. This is done with a machine similar to an edge-baster.

Q. Difficult, or simple?

A. Fairly difficult. Not terribly difficult. She must watch the edge, that it is smooth and straight. She also trains the edges of the collars. This is a difficult job. This is not a sewing machine, although I do the operation on [1205] a sewing machine with a cutting attachment.

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[1208] Q. All right. Go ahead.

A. As it was reported to me, that's what happened. That's what we mean when we term Ida Harper—

Q. (By Trial Examiner) —as contrasted with which Geneva Harris was solid.

A. We considered Geneva Harris a solid, steady operation. Sat at her work and did it.

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[1210] Q. (By Mr. Thompson) Mr. Prosterman, what was Ida Harper doing at the time she was laid off?

A. Felling the bottom lining.

Q. And what was Geneva Harris doing at the time she was laid off?

A. Felling the bottom hem.

Q. After Ida Harper was laid off, what was Geneva Harris doing?

A. She did Ida Harper's work in addition to her own.

Q. What was that?

A. Felling the bottom lining, and the bottom hem.

Q. Now at the end of four weeks after Ida Harper had been [1211] laid off, what was Geneva Harris doing?

A. Geneva Harris felled the bottom hem, but this operation had been increased to where she didn't have as much time to do the other operation.

Q. (By Trial Examiner) In what respect was it increased?

A. The stitching was lengthened. In other words, the amount of stitching was increased.

Q. (By Mr. Thompson) Is that the amount of stitching per garment, or amount of garments?

A. The amount of stitching per garment.

Q. All right. She was doing that. Was she doing anything else?

A. Yes. She still continued to do part of the bottom lining felling.

Q. Would anyone else do part of the bottom lining felling in addition to her?

A. Charlotte Finley.

Q. And was Charlotte Finley doing anything else other than bottom lining?

A. Her own job.

Q. From that time on, did anybody do the work that Ida Harper was doing at the time she was laid off, and nothing else?

A. No.

Q. Is anybody doing that now, and nothing else?

A. No.

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[1214] Q. What were the factors which were taken in consideration in determining to lay off Frances Elizabeth Johnson?

A. Well, it was necessary to cut back our production in that section, and I felt that that particular operation combined with the pocket-making operation would give me the necessary production in that section, and since the--

Q. What section are you referring to?

A. I am referring to the lining making section.

Q. How many people were in that section?

A. Approximately four.

Q. (By Trial Examiner) What did you call that section?

A. Lining making section.

Q. (By Mr. Thompson) What operations do you include in that section?

A. The sewing of the facing to the lining, the sewing of darts on certain types of lining; certain models carry certain darts.

[1215] Q. Who was performing that operation?

A. Well, when there were darts to be sewn, this was also done by the operator—let me say this was normally done by the operator who sewed the facings.

Q. Who was that?

A. That would be Frances Elizabeth Johnson.

Q. All right, sir.

A. The setting of the pocket was another operation.

Q. Who performed that operation?

A. That was done by two operators; Imogene Meeks and Odelle Barnes. Then another operation was the making of the backs. In the fully lined coat is called making of the back. In the half-lined coat, which was the majority of our work, it is called making the yoke. That was performed by Annie Brooks. There is another operation which was performed by—usually by a utility operator, and that is the sewing of the pocket facings.

Q. Who was doing that?

A. That was usually done by Mary Lou Partain.

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[1217] Q. All right, sir. Now what did Nellie Hood do, as a floor—

[1218] A. She matched various types of work. She matched pockets into coats for the pocket makers. She matched backs and fronts for the side seamer. She marked fronts for welt pockets. You might say she was a bundle girl.

Q. Was she ever terminated?

A. She was terminated on January 31, 1958.

Q. Was she discharged or laid off?

A. She was laid off.

Q. What were the factors which led to her lay-off?

A. Well, in view of the necessity for cutting back personnel, and the fact that her work was very, you might say unskilled work, we felt that we could absorb that work among our other people.

Q. After she was laid off, what became of her work; who did her work?

A. Well, it was done partially by Jerry Carter.

Q. Who was Jerry Carter?

A. Jerry Carter was the supervisor.

Q. Go ahead.

A. And partially by various other operators who would have time to spare. Any operator that had a half an hour here and there, we put on to help.

Q. Since Nellie Hood was laid off in January—January 31, 1958—who has done—who, if anyone, has done the work which she did, and no other work?

[1219] A. No one, until we found it necessary to assign someone to that job full time, at which time we re-hired Nellie Hood.

Q. And when was that?

A. I don't have the date of her re-hiring.

Trial Examiner: July 18th?

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[1221] Q. What were the factors which led to the decision to lay off Nellie Wood?

A. With Nellie Wood it was simply a question of cutting back, because we didn't need Nellie Wood in that

particular operation. We didn't need her production. And since the other two girls had been on the job a longer period of time, we had no reason to retain her.

Q. Since the lay off on January 31st, who if anyone has done the work which Nellie Wood was doing, and no other work?

A. No one.

Q. In reaching your decision to lay off Nellie Wood, as opposed to other people, did you take into consideration any other employees other than Starrett and Bowen?

[1222] A. No, sir.

Q. In reaching your decision to lay off Nellie Wood, did you take into consideration any other operations other than the ones which she had been doing?

A. No, sir.

* * * * * * *

[1236] Q. (By Mr. Thompson) Do you recall an employee by the name of Frances Allen?

A. Yes.

Q. What was Frances Allen hired to do?

A. She was hired to make vents.

Q. Were there any employees who were laid off on January 31st, who made vents?

A. No.

* * * * * * *

[1237] Q. Did you take into consideration any of your people who were presently working for the filling of vacancies at any time?

A. At every time. Whenever I had to fill a vacancy I would also consider the people who were working, before going to the outside.

Q. Now in the event you didn't have somebody in your work force to fill the vacancy, what did you do then?

A. Well, there were several ways. Occasionally I would have applications from operators who had applied for work. I would sometimes ask other operators if they knew of certain people that might qualify for any particular job. I asked the supervisors if they knew of anybody. I believe that's about it.

* * * * * * *

[1247] Q. (By Trial Examiner) Mr. Prosterman, what did you do in cases where girls were required to fix something which had been poorly made the first time by some other operator; some other employee? That occurred, did it not?

A. Operators were not required to fix other operators' work on their own time; unless they were utility operators, or unless they were working on time work and not piece work. When a piece worker had to fix work that another operator was responsible for, she was either paid time work for it, or she was given an allowance to offset the loss in time.

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[1255] SARAH SANDERS.

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[1260] Q. (By Mr. Thompson) Do you know what part of the coat Grace McCart sewed?

A. Collar.

Q. And what part of the coat were you supposed to slightly inspect?

A. Collar.

Q. And did you ever find any defects in that portion of the coat; the collar?

A. Yes.

Q. Do you recall whether you found defects over a period of time, or whether you just found them once in a while? Do you recall? In the collar?

A. I just found a good many.

Q. Do you find as many now as you used to find in the collars?

A. No, sir.

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[1265] I. S. PROSTERMAN,

* * * * * * *

Cross-Examination (Cont'd).

Q. (By Mr. Joy) Mr. Prosterman * * * [1270] What did he tell you this time?

A. He told me that due to a general business situation, it was very possible that a cut-back would be necessary, and that I should figure out what to do in the event that a cut-back would be necessary.

Q. At the time he said this to you, was only that a cut-back would be possible; is that right?

A. That's right.

Trial Examiner: When was this?

The Witness: Early December.

* * * * * * *

[1309] Q. (By Mr. Thompson) Mr. Prosterman, what was the occasion for re-hiring Pearl Coker?

A. We lost an operator from this section by the name of Hester Lou McCart. She quit.

Q. What section are you referring to?

A. The collar-setting section.

Q. What was the occasion for re-hiring Violet Ewing?

A. Mary Lou Partain quit, and we hired her to work in Mary Lou Partain's place.

Q. What job did you re-hire her for?

A. Well, only part of Mary Lou Partain's abilities, you might say.

* * * * * * *

Q. (By Mr. Thompson) What job does she do now?

A. She sews pocket facings for linings; joins the side seams of full-lined coats, boys' coats; assists in joining of shoulder [1310] linings and to the present time that is all that I know that she has been able to do.

Q. Mr. Prosterman, what type jobs are they; are they skilled jobs or mechanical jobs?

A. They are very simple, mechanical jobs.

Q. Mr. Prosterman, when you put Mary Barnes back to replace Annie Brooks, why didn't you put Evelyn Hudson in that job?

A. Well, in my judgment I considered Mary Barnes more of a type of an operator I would like to have on that job.

Q. What factors, if any, entered into that consideration?

A. Well, mainly it was due to the fact that Mary Barnes was used to handling lining. You see, the sleeve-makers—when she worked as a sleeve-maker, part of the job was the handling of two pieces of lining, putting two pieces of lining together, and that was a very great deter-

mining factor in putting her back to work. The handling of lining is difficult to learn. And I felt that it would cost us less money to break in Mary Barnes on that particular job than Evelyn Hudson.

• • • • • • •

Q. (By Mr. Sheinkman) Would it have cost you less money to have trained Pauline McGee on that job than Mary Barnes?

A. Oh, I think it would have cost us a lot more money to train Pauline McGee on that job than Mary Barnes.

Q. How about Bonnie Hamilton?

[1311] A. Yes. Definitely.

Q. How about Violet Ewing?

A. I think so.

• • • • • • •

[1319] Q. Did Pauline McGee have difficulty in making production

A. Pauline McGee never made production.

Q. She never made production?

A. No.

Q. Any other girls in that operation make production?

A. Yes.

• • • • • • •

Q. (By Mr. Sheinkman) How about Violet Ewing? Did she have more skill than Mary Barnes in her job?

A. I would say that Violet Ewing had adequate skill.

[1320] Q. Did she have more skill than Mary Barnes?

A. No; I wouldn't say that she had more skill than Mary Barnes.

Q. Before her lay-off was she performing a more difficult job, or a less difficult job, than Mary Barnes?

A. Oh, a much less difficult job than Mary Barnes.

Q. How about Frances Johnson? Was she performing a less difficult job, or more difficult job than Mary Barnes?

A. A less difficult job.

Q. And how long had Mary Barnes been working there?

A. How long had Mary Barnes been working—

Q. Yes. At the plant. Before her lay-off.

A. I believe she was hired some time during the month of July, 1957. I am not certain of it.

* * * * * * *

[1322] Q. And in making your selections for discharges and lay-offs I presume that you did not consider the union affiliation or lack of affiliation of these employees who were discharged or laid off as having any factor in connection with the lay-off or discharge.

A. That is right. That had no bearing upon my decision at all.

Q. Now when did you first learn, after coming to the Walton Manufacturing Company plant, that Lucille Yancey was not a desirable employee?

A. Well, I learned that very, very shortly after I came there. I would say within two weeks.

Q. That would be the middle of September?

A. Yes, sir.

Q. And did you receive reports from her supervisor with regard to that fact?

A. I did receive reports.

Q. And how often did you get those reports?

[1323] A. Well, for a while I was getting those reports fairly constantly, practically daily.

• • • • • • •

Q. Now I think you said that early in December Morris Sharff spoke to you about the fact that business situations—I think you said the business situation might require a lay-off in the future.

A. Might require a cut-back, and subsequent lay-off.

Q. Now was that all he said?

A. That was all, as I recall.

Q. To the best of your present recollection when did he say that to you?

A. Some time in early December, sir. I can't pin-point it any closer than that.

Q. Was it before or after you discharged Lucille Yancey?

A. It was in and about the same time, but I can't tell you whether it was before or after. I would say it was either immediately before or after.

• • • • • • •

[1324] Q. Now what if anything happened in early December, which caused you to discharge Lucille Yancey at that time?

A. Well, Lucille Yancey was doing bad work, it's true—

Q. Now she has been doing bad work for all the time that you [1325] have been working for the company—

A. That's right, but there were—

Q. (Continuing) —and she had been an unsatisfactory employee.

A. And had been an unsatisfactory employee.

* * * * * * *

[1326] Q. What circumstance or occurrence occurred on January 10th to require Grace McCart's discharge on that date, rather than prior to that date?

A. Well, I think in connection with that you might say I had this other girl available, and we had been having to put up [1327] with this bad work which required repairs for so long a time that it just all came to a head, and I decided that we had just taken enough, and we had this other operator available, I wanted to take a chance with this other operator and try her out.

Q. What about Pearl Coker? Was her work unsatisfactory right along?

A. Her work was unsatisfactory during the early part of the time that I was there; when I first came there. Her quality improved. Her quality did improve. However, I had to look at another side of this particular question. I am responsible for the costs in the factory, and if I have the opportunity of employing two girls who could produce, make good money and get me my production with better quality, I figured that that's what I should do.

Q. What made you decide that on January 17th, that particular day, to discharge her?

A. Well, I don't know about that particular day, but this girl, who we subsequently re-hired to come into the section, had sent word along in about that time through her sister that she was available for work, if we wanted to take her back, and that was why I decided to vacate the

position in order to make room for this girl to come back onto the job.

* * * * * * *

[1328] Q. When you said there is no other job in the plant which required similar skill, that is not correct; is that right?

A. No; it was correct; because actually the similar operation I have reference to, although it makes the same type of stitch, it employs an entirely different type of machine and the work is entirely different, and there is no comparison between the two jobs.

Q. Is there any other job in the plant similar to basting [1329] bottom hems?

A. There is one very small job which—sewing a seam approximately so big on a basting machine, and even that is not done on the same type of machine. That's also a similar job. Very, very small job.

* * * * * * *

Q. Did you consider that when you decided to lay her off?

A. Yes; I did consider that.

Q. Then nevertheless, you did not.

[1330] A. I did not retain her, because there was not enough work to keep three operators busy. There was just enough to keep two.

Q. Why did you retain the other two?

A. Well, because they were better operators. They were hired before Nellie Wood.

* * * * * * *

Q. And at that point you gave her help; a girl by the name of Geraldine, whose last name you didn't remember.

* * * * * * *

Q. What was this girl, Geraldine Lacey, doing at that time?

A. She did an operation known as second facing basting.

Q. Could Nellie Wood have done that job?

A. No. Nellie had never trained for that job.

Q. Did you consider training Nellie Wood for that job?

A. No.

Q. Did you consider Nellie Wood at all, as compared with Geraldine Lacey?

* * * * * * *

[1335] Q. (By Mr. Thompson) What does Mr. Stevens do at the plant?

A. What does he do at the plant?

Q. Yes, sir.

A. Well, he is a sort of a man of all work, sir. He sweeps, and runs errands, and goes to different places for us; picks up the mail; takes the mail; a variety of things.

Q. Is he a supervisor?

A. No. No supervisor.

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[1358] Mr. Thompson: * * * We are not conceding that he was ever contractually employed, or was ever officially connected with, the corporation.

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[1359] Mr. Thompson: Mr. Examiner, I think I should state—I should repeat, that we are not conceding that he was either an officer, a director, a stockholder, or a paid employee of this company.

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MORRIS SHARFF.

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[1361] A. Yes. We thought that to start out an operation like that at the beginning that it would take 110, or 120 people to do that.

Q. Now subsequent to that time was this number of people that you needed to turn out your production ever reduced?

A. Oh, yes. In starting a shop, you always need more people to start it than you will eventually, because as the operators [1362] gain the knowledge of the operation, and learn the operation, and later on pick up the speed, and where you might have three or four operators doing one particular job, you may eventually end up with only two.

Q. What does this result from?

A. Well, this results from an increased knowledge of their job in learning how to handle the material better that they are feeding into the sewing machine, and, generally, experience of an operator on that particular operation that they are working on.

Q. Now did that take place at the Walton Manufacturing Company?

A. It took place, and it is still taking place.

Q. Would you give us an example of what you are talking about in, say, one operation?

A. Well, I remember very distinctly on collar-setting; attaching the collar to the coat; that there was a time, there, when there were about eight collar-setters. I think that their total production could not have been more than 275, 300 a day. After several weeks they learned their job a little better and production picked up a little bit, and probably one was dropped off at that time. And then a few weeks later, another; and so on down the line; until for 500 coats, you would probably only need about three operators, and for 300 coats, you would need two operators.

[1363] Q. That's in that particular operation?

A. Right.

Q. Now have there been any other reductions in the work force at the Walton Manufacturing Company?

A. It happened throughout the whole plant, and particularly in another section, the side pocket making. Pretty much the same situation existed there, where there were eight or ten side pocket makers and gradually their production—in fact the number of employees was cut back to four, who currently can turn about—turn out about 350, 375 pairs of side pockets a day.

* * * * * * *

Q. Has there been change in that setting of so many per day since the time it began?

A. Oh, yes. It has been changed to 300 to 350 a day.

[1364] Q. When did that change take place?

A. That change took place—it was planned for—actually took place January 31, 1958.

Q. Now how many garments were you making prior to January 31, 1958?

A. Well, we had reached a top peak, I think, of about 21, 2200 a week.

Q. Now subsequent to January 31st has there been any change in the volume of production?

A. Oh, yes. It went very sharply down. And went down to a volume of about 1500, 1600 a week.

* * * * * * *

[1367] Q. I believe you stated that you had a lay-off around January 31st.

A. Yes, sir.

Q. Was that a seasonal lay-off, or was there some other reason for the lay-off?

A. No. There was a cut-back of employees to—due to cut-down on production.

Q Do you ever have seasonal cut-backs in this business?

A. You have a seasonal cut-back in the sense that you don't need as many garments per week, so you work partial weeks. In other words, you would work your shop two or three days per week. You would still work it at the same production per day, but you would work less days.

Q. When is the—if there is one—when is the slow season in this business?

A. In this particular business it would be the end of October, November, the first half of December. It would be the end of March, April and first part of May, production-wise.

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[1368] Q. (By Mr. Thompson) Did you have a seasonal slack period at any time during 1957?

A. Yes, sir.

Q. When was it?

A. That would be to the end of October, November and first part of December.

Q. Was there any change at all made in the work force, or hours, or anything, during that period of seasonal slack?

A. The work force was retained intact, but the hours were cut down.

* * * * * * *

[1369] Q. Why didn't you lay off people in October and November, rather than cutting back on the hours?

A. Because we wanted to retain the potentiality of the 425 garments for the spring season.

Q. All right. Now why did you on January 31st, and thereabouts, lay off people instead of cutting hours?

A. Well, there were several reasons. Number 1, we did not have sufficient orders that had come in from our travelling men through the mail. Our projection of requirements showed that we only needed about 300 garments a day.

Number 2, we had just received, about the middle of January, our fiscal year-end statements from our accountants, which showed that we had lost practically all of the capital that we had in the business, and that we were operating the business on a capital of less than $1,000, and financially, [1370] we could not afford to operate a larger business than the cut-back to 300 a day.

Q. Now did your production requirement have any changes after January 31st?

A. No. Our production requirements remained the same.

Q. Have you made any changes in the capacity that your plant has been rigged for since then?

A. Personnel-wise, no. Except—

Q. What do you mean by the qualification there? What, otherwise—

A. We haven't added any more employees to give it a potential capacity of more than that.

Q. Does it have any greater potential as it is presently rigged than it had on January 31st?

A. Yes, sir.

Q. How do you account for that?

A. Again, the increase in experience of another seven months—six or seven months more experience of the operators has raised the capacity of the same amount of people from 300 a day to 350 a day.

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[1374] Q. Now what effect, if any, did this letter have on the decision as to whether or not you would have a lay-off?

A. None.

Q. What effect, if any, did this letter have on the individuals who would be laid off during the lay-off?

A. None.

Q. Was this letter given any consideration in reaching the determination as to who would be laid off?

A. No.

Q. Was it considered at all during the course of the lay-off?

A. Yes.

Q. To what extent was it considered? How did you consider it? Explain that, please, sir.

A. Well, we had received this letter from the union, stating that a copy had gone to the National Labor Relations Boaird, and we considered it a threat against the firm demanding partial treatment for the people that were listed thereon.

When we received the letter, we knew that we were in quite a dilemma, because if we laid off anybody on this list, we would be subject to a Labor Board trial, like this. If we [1375] selected other individuals who were more capable, to be laid off, and retained some of these on the list that had originally been scheduled for lay-off, then those people would have a case against us.

Q. So what did you do?

A. We had very little choice but to go back to our original line of thought, and to determine to lay off on the basis of merit alone, and try to do the job with as much integrity as we could.

Q. Now how many of the people on General Counsel's Exhibit No. 5 were employed after January 31st? By that, Mr. Sharff, I mean immediately after January 31st.

A. Two.

Q. Who were they?

A. That would be Jeanette Beaver, and Mary Lou Partain.

Q. How many have been employed since that time?

A. Four. They are Violet Ewing, Nellie Ruth Hood, Evelyn Hudson, and Nellie Wood.

Q. Are any of the people on that list former employees of the Loganville Pants Company?

A. Yes; there are two.

Q. Who are they?

A. Lela Beaver—I am sorry; there is only one. Lela Beaver.

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[1376] Q. (By Mr. Thompson) How come you to go asking people should their name be on the list?

A. Well, I didn't want to put up a letter that I thought was as important as this, with girls' names on it, without asking them whether or not they had authorized their signature.

Q. How come you to put it up in the first place?

A. Well, I thought under the circumstances that existed, that people themselves should be informed of everything that went on, and particularly about this demand by the Union for preferential treatment for these 12 people.

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Q. And what did you do, if anything, upon learning this?

[1377] A. I don't understand the question.

Q. Did you take any action at all, once you learned that the Union was trying to organize your plant? Did you do anything—do any acts at all, at that time?

A. No, sir.

* * * * * * *

[1379] Q. (By Trial Examiner) Mr. Sharff, at the time you made the speech did you record it?

A. Yes, sir.

Q. Into what instrument was it recorded?

A. It was recorded into a Dictaphone.

Q. And is the—Is this the transcript of the words that you used?

A. Yes, sir.

[1380] Q. And is this the exact speech which you made?

A. Yes.

Q. And when was it transcribed into this form?

A. Oh, I would say several days afterward.

* * * * * * *

[1382] Q. This is transcription of the speech that you made at the Walton plant; is that correct?

A. Yes, sir.

Trial Examiner: Mr. Joy, are you objecting to this—

Mr. Thompson: Mr. Examiner, we offer this as the speech [1383] that was delivered at the Walton plant. I did not realize, at the time of offering it, that it did not pertain to both plants. I think Mr. Sharff has clarified that in that he did deliver two speeches, without reading from the transcript, and therefore I am sure there must be some difference in the words. We offer this as the speech which was delivered at the Walton plant, only.

Also, I think we should point out that the first three lines on page 1 are merely titles and were not a part of the speech.

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[1393] Q. (By Mr. Thompson) Mr. Sharff, I hand you back Respondents' Exhibit 3. I notice on there that some portion of that is underlined. Who did that?

A. I did.

Q. How come you to underline part of it?

A. I underlined it for the same reason that I wrote your office to ask them to prepare the information for us.

Q. What was that reason?

A. At this particular time there was quite a misunderstanding among the people in the plant as to whether or not they had to belong to the Union in order to work.

Q. Now how do you know that?

A. Well, quite a few of them came to me and asked me if they didn't join the union, would they lose their jobs, and evidently my first speech didn't convey the proper meaning to the people, and therefore I gave the second speech and posted this notice.

Q. What do you mean, it didn't convey the proper meaning?

A. Well, I tried to make clear in my first speech and second speech that the individual could or could not join the union; it was their own decision to make. And whichever decision that they did make, it would not affect their employment at Walton [1394] Manufacturing Company.

Q. Now how do you mean that people misunderstood that?

A. I had quite a few people come to me and ask me very directly, was I for the union? That they took my speech to mean that. And of course I reassured them that it made no difference to me which they did.

Q. Were you for the Union?

A. No, sir.

Trial Examiner: Did you tell them that?

The Witness: No.

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[1404] Trial Examiner: He said they made the demand. As I [1405] understood it. Would you explain your answer, please?

The Witness: Yes, sir. Nat Greenberg, who was the head of the shipping clerks union of Amalgamated Workers —Clothing Workers—of the New York Joint Board of the Amalgamated Clothing Workers Union—

Trial Examiner: What did he do?

The Witness: —flew down to Atlanta and called me on the phone just to speak to me with regards to the organizing Walton Manufacturing Company.

Trial Examiner: Did he demand recognition?

The Witness: He demanded recognition that we—he demanded that we sign a contract with Amalgamated Clothing Workers Union, and said that if we didn't, that he would strike the place.

Q. (By Mr. Thompson) Do you know whether the Company ever received any petition from the National Labor Relations Board for an election, or anything like that?

A. No, sir.

Q. (By Trial Examiner) Did the Company file a petition?

A. No, sir.

Q. (By Mr. Thompson) Has there ever been any election at the Walton Manufacturing Company?

A. No, sir.

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[1407] A. There were places where the under-collar was supposed to be sewed to the coat, where the stitching was

missing, where there were holes left in the under-collar—in the junction of the seam, and quite a bit of thread was mismatched. In other words, she used the wrong color thread on the coat.

Q. Do you know about when she was discharged?

A. I think about January 10th.

Q. Did union activities have anything to do with her discharge?

A. No, sir.

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[1409] Q. At the time Grace McCart was discharged, did you know whether or not she belonged to the union?

A. No, sir.

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[1411] The Reporter: (Reading) "A. I told her that we couldn't give her a job now. That we had to wait and see what the union did."

A. Well, I meant that recently having been threatened with a strike, we certainly weren't going to make any promises to hire anyone with a pending strike.

Q. (By Mr. Thompson) Did you condition the employment of this woman on whether or not she belonged to the union or joined the union?

A. No, sir.

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Q. (By Mr. Thompson) Mr. Sharff, when you received General Counsel's Exhibit No. 5, what, exactly, were the questions that you asked the employees as you went around?

A. "Does your name belong on here?" "Did you authorize the [1412] use of your name?" "Do you realize

what the letter means; what the contents of the letter are?" Either O. K., or "All right," after that.

Q. Did you vary those questions any? Did you ask different questions of different people, or the same question of all the people?

A. The same question of all the people.

* * * * * * *

Q. (By Mr. Thompson) Did you ever tell any of these girls that this letter could cause them hardships, or lead to trouble, or anything along that line?

A. No, sir.

Q. Did you ever say anything to that effect to any of these people?

A. No.

Q. Did you ask any of them: Do you know what this means?

A. No.

Q. Do you know J. B. Stevens?

A. Yes, sir.

Q. Do you recall ever telling J. B. Stevens that you would close the plant if the Union came in?

[1413] A. No, sir.

Q. Did you ever tell J. B. Stevens anything to that effect

A. No.

Q. Do you recall whether Nellie Wood ever came back and was re-employed by the company?

A. Yes, sir.

Q. When, approximately, was she re-employed?

A. I believe it was in June of '58.

Q. Do you recall when she came back to re-apply, or if she came back to re-apply before that?

A. Yes, sir.

Q. What took place, if anything, at that time?

A. Well, Nellie came in and asked for her job back, and I told her that we didn't have anything at that time, but that possibly in a week's time that we would be able to place her; that something that I had in mind would open up, either on her old job, or else being that she was an experienced pants operator, in the pants line.

At that time she stated to me that she had signed a union card and she wanted to get out of the union. She was a complainant—she didn't say she was a complainant. She said she had signed charges against us, and she didn't want to sign any charges.

And I said, "Well, Mr. Joy is right here from the National Labor Relations Board investigating the case. If you would [1414] like to, let's both step next door and tell it to Mr. Joy."

Well, we went next door—

Q. Where was Mr. Joy?

A. Well, he was in my brother's office, which was adjacent to mine.

Q. What happened then?

A. And we went in there, and Nellie told Mr. Joy substantially: "I have no charges against Mr. Sharff or his company. That I signed the union card and I am sorry that I signed it. I want to get out of the whole thing."

And Mr. Joy made notes on the pad that he was working with, and I believe I asked at that time if there was

anything necessary further to do, and I believe—I am not quite sure—that Mr. Joy said "No."

Q. Now did you promise this woman if she would do that, that you would give her a job?

A. No, sir.

Q. Mr. Sharff, I will ask you to look at General Counsel's Exhibit 6-A. Mr. Sharff, prior to the trial of this case, which began about a week ago, had you ever seen that letter?

A. No, sir.

Q. Had you ever heard about that letter?

A. No.

Q. Did you, or anyone else connected with the management force of this company, so far as you know, have anything to do [1415] with that letter?

A. No.

* * * * * * *

Q. Now as far as you know was there a rule at the Loganville Pants plant that employees were not to talk about union on the company property?

A. No, sir.

Q. Or were not to talk about union in the plant?

A. No, sir.

Q. So far as you know, was there any rule at the Loganville Pants plant concerning the talking about—the talking of unions?

[1416] A. No.

Q. Do you recall Lela Beaver?

A. Yes.

Q. Where did she work?

A. She worked in the Pants plant.

Q. Did you ever have any conversations with Lela Beaver concerning the Union?

A. Yes; I did.

Q. What was that conversation?

A. I believe after the day she was discharged, or a few days later, she came to see me and again in my office, and I believe there were just the two of us there. Lela said that she knew that she lost her job because of her union membership.

Q. What did you say?

A. I said No; it wasn't so. And she again insisted. And she said that she had signed a card and she knew that was the reason why she lost her job. I said No; it wasn't. And I think I added, "Well, how did you get mixed up with these people?"

Q. Was there anything else said?

A. No, sir.

Q. Did you ever tell Lela Beaver that you would go out the back door if the union came in?

A. No, sir.

Q. Did you ever say anything to that effect?

[1417] A. I did say that if the union were to come in and organize the plant, that I personally would not be there.

Q. Did you say that to Lela Beaver?

A. No. I said that in my speech.

Q. Did you ever make any statement like that in a conversation just between you and Lela Beaver?

A. No, sir.

* * * * * * *

[1418] Q. Mr. Sharff, did you ever tell Evelyn Hudson that the letter which the Union had written, and which is General Counsel's Exhibit 5, would work a hardship on her?

A. No, sir.

* * * * * * *

[1441] Q. Now tell us what took place at that time.

A. Lucille Yancey came in and said that she knew she was discharged because of her union membership activity, and I told her that it had nothing to do with it. In fact I didn't know that she was a union member.

Q. What else happened, if anything?

A. Well, she maintained that. That was about all that happened then.

Q. Did she ask her to put her back to work, or anything like [1442] that?

A. Yes, she did.

Q. What did you tell her?

A. I told her no. In fact—there was further conversation. Lucille Yancey said that she would resign from the union—No; first she said she would vote against the union, if it came to a vote, and I said it would make no difference.

Then she said that she would resign from the union, and I said that it would make no difference. And then she offered to work for us with regard to the union. She pointed out that she had worked to bring the plant to Loganville, and to raise the money to build the plant, and to recruit employees, and she worked for the plant then; she could work for it now. And of course I said no.

Q. Was there anything else said at that time?

A. No, sir.

Q. I believe you stated you had another conversation with Lucille Yancey. When did that take place?

A. I imagine that this was about either three or four days after that, or the next week end.

Q. Where did that take place?

A. In my office.

Q. Who was present?

A. No; it didn't take place during the week-end. It was during the week. I was there. My brother was there; Arthur. [1443] Mrs. Yancey was there, and Mr. Yancey was there.

Q. And what was said, if anything, at that time?

A. Mrs. Yancey again maintained that she was fired because of her union connections, and she showed me her discharge slip, which appeared in court, here. And I started to copy down the reasons for her discharge, I believe it was from Carwood.

At that time her husband got up and took the slip back, before I had a chance to really examine it.

About then my brother left the room and Lucille started to talk to me again with regards to her being discharged, and whether or not she could get her job back, and Mr. Yancey was seated in a chair opposite me. He crossed his legs and put his hat on his knee, reached into his pocket and took out a small pad and a pencil, and started to apparently make notes.

Q. Was anything else said about unions, or anything along the lines of unions?

A. No, sir.

Q. Was anything else said concerning Lucille Yancey's discharge?

A. No, sir.

* * * * * * *

[1444] Q. And was Pearl Coker ever terminated from her employment?

A. Yes; she was.

Q. When did that take place?

A. I believe the 17th of January, 1958.

Q. Mr. Sharff, going back a minute to Lucille Yancey, I overlooked this question. Did you, at the time Lucille Yancey was discharged, know whether or not she belonged to the union?

A. No, sir.

Q. Did the fact she belonged to the union have anything to do with her discharge, or with the fact she was never rehired?

A. No, sir.

* * * * * * *

[1445] Q. Now how is it that you laid off or discharged Pearl Coker, rather than getting rid of Hester Lou McCart? Weren't they doing the same thing?

A. No—they were doing the same operation, but Hester made between $55 and $62 a week, and the work was available for both of them, and each one made as many as they could, and Pearl Coker, to my knowledge, never made production; which means that she earned anywhere between $35 and $38 a week, towards the end, even though she was being paid $40.

[1446] Q. Mr. Sharff, at the time these people were either discharged or laid off that are charging parties in this case, were there other people in the plant who had more make-up pay than they had?

A. Oh, yes.

Q. Now how do you explain eliminating people who had less make-up pay than other people?

* * * * * * *

[1447] Q. (By Mr. Thompson) Mr. Sharff, what we want to know is what determined whether the make-up on this particular job was unsatisfactory, or whether it was satisfactory? In other words you said you had people in the plant who had more make-up than some of the people that you laid off. What I want to know is what determined whether the make-up of the people who were retained, for example, was satisfactory or unsatisfac- [1448] tory?

A. Well, no make-up is satisfactory.

Q. Suppose I use the word acceptable?

A. No make-up is acceptable. You try to eliminate it as much as you can. However, make-up in one portion of the plant, or one section, has nothing at all to do with the selection of a lay-off on anything similar to that in another section. Make-up only became a factor when it was necessary to eliminate one operator from a section of more than one operator, and quality being equal, then make-up became important.

Q. Why couldn't you compare the make-up of a girl in one section with the make-up of a girl in another section?

A. There is a difference of training period on various operations. Some operations you might have a training period of two or three weeks, and some may run into as long as a few months, and then there are others like lapel padding—not lapel padding, but bridle basting may run several years to really develop an operator.

I think that we confuse an issue, here, when we say that make-up as such is the difference between the money that a girl earns, and the money that you are forced to pay her by law. We consider production a quota at which a girl will make considerably more than $40.

* * * * * * *

[1449] Q. What were the factors which led to the determination that Bonnie Hamilton would be laid off?

A. It was purely a matter of reduction of the amount of work available for that section, and we had two employees [1450] there; Lucile Yancey number two, and Bonnie Hamilton; and there was only enough work left for one operator.

* * * * * * *

Q. Why didn't you put Bonnie Hamilton on some other job, other than the one she was doing, if she was not an unsatisfactory employee?

A. Well, if we took Bonnie Hamilton and put her on another job, it would necessitate laying off the worker that was doing that job, and then we would have no assurance that Bonnie Hamilton would be able to do that job. There simply were not enough jobs available for the people that we had.

Q. Were there any other jobs there that required the same skill, or which Bonnie Hamilton's experience would enable her to do?

A. No, sir.

Q. Then if you had put her on another job, what if anything would have been required in order for her to do the job?

* * * * * * *

[1451] A. Regardless of the job that Bonnie Hamilton would be put on, there would be a question of re-training the operator.

Q. (By Mr. Thompson) Was there any question of re-training, or training of the operators that you had on the other jobs?

A. No, sir.

Q. Are you familiar with an employee by the name of Pauline McGee?

A. Yes; I am.

[1452] Q. Was she ever laid off or discharged?

A. She was laid off January 31st.

Q. What were the circumstances of her lay-off?

A. There, again, it was strictly a cut-back of production. We had two operators, and one job.

Q. Who was the other operator?

A. Charlotte Finley.

Q. Why did you lay off McGee, instead of Finley?

A. Well, Charlotte Finley was a much neater operator, and did better work.

Q. Why didn't you move McGee over onto another job?

A. Again it would have been a question of re-training

Q. Do you recall an employee by the name of Violet Ewing?

A. Yes; I do.

Q. What job did she do?

A. She prepared the welts. She made the welts.

Q. Was she ever terminated from the company?

A. Yes; she was.

Q. When was she terminated?

A. January 31st.

Q. What were the factors which led to her termination?

A. It was strictly a cut-back in production. We had enough work for one operator. We had two operators. They did dissimilar work for a portion of their job, and they did share a mechanical—a very mechanical job of sewing facings.

[1453] Q. Who was the other operator?

A. That was Margaret Britt. Margaret Britt's job was a much more complicated job, and required a much better control over the machine than we felt Violet Ewing had. Because she was trained for a straight seam job, rather than the skills necessary to make a flap.

Q. Mr. Sharff, do you recall an employee by the name of Ida Harper?

A. Yes; I do.

Q. Was she ever terminated?

A. Yes; she was.

Q. When?

A. January 31st.

Q. Was she discharged, or laid off?

A. She was laid off.

Q. What were the factors which led to the decision to lay her off?

A. Again we had a question of not enough jobs to go around. Ida Harper was a completely unsatisfactory operator, both in quality, conduct and quantity.

Q. What do you mean by conduct? What was the conduct that was unacceptable?

A. She would laugh and fool around during working hours at the machine. She wouldn't put in a good day's work. She would put in a good hour's work, anid then fool around for a [1454] couple of hours.

Q. Was that occasioned by the fact that she didn't have any work to do?

A. No, sir.

• • • • • • •

[1455] —had taken over Lucille Yancey's work, and she was being trained for that job and she was coming along fairly well. With the cut-back, we found ourselves with the two operators adjacent to her who handled the work right after she did, Odelle Barnes and Imogene Meeks, who were two top-notch inside breast pocket girls; excellent operators, and doing a very complicated job; as opposed to one that Elizabeth Johnson was doing, which was purely mechanical. We would only have work enough, half of Elizabeth Johnson, and we would have had two-thirds of a job for Imogene Meeks and two-thirds of a job for Odelle Barnes. Sc rather than have a situation like that exist, we retained the services of the two better operators, Meeks and Barnes, who easily absorbed the work that Johnson was doing.

Q. Do you recall an employee by the name of Nellie Hood?

A. I do.

Q. What did Nellie Hood do?

A. Nellie was a floor worker in Jerry Carter's section.

Q. Was she ever terminated?

A. She was terminated; she was laid off on January 31st.

Q. What were the factors which led to the decision to lay her off?

A. With the cut-back in production in Jerry's section, we found ourselves with a situation that couldn't easily be rectified by laying off a-tenth of an operator here, or a-tenth [1456] of an operator there. It developed that certain girls had an hour here, or a half hour there, during the day, and could, with Jerry's help, absorb Nellie Hood's work.

• • • • • • •

She—Johnnie Starrett was the regular operator for edge-taping and Lavrene Bowen was the regular operator for edge-basting, and Nellie helped each one of them about half and half. We cut our production approximately one-third, and where we had three operators on identical—within this little section, we could only use two. So our choice went to our regular operators who did the work cleaner, and with a little better production, although the production was not a factor [1457] in the decision.

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[1461] Q. (By Mr. Thompson) What part did the fact that these people; Hamilton, McGee, Ewing, Hairper, Johnson, Hood, Wood, Hudson and Beaver; belonging to the union, have to do with their lay-off?

A. None at all.

Q. Did Pearl Coker's union membership have anything to do with her lay-off?

A. No.

Q. Did Grace McCart's union membership have anything to do with her lay-off?

A. No.

Q. Did you know, at the time Grace McCart was discharged, that she was a union member?

A. No; I did not.

• • • • • • •

[1463] Q. (By Mr. Thompson) Was there anybody on this list of people you hired, shown on Respondents' Exhibit 9, who was hired after January 31st to a job that anyone who was laid off on January 31st could have performed?

A. No, sir.

• • • • • • •

Q. The question is this: Is there anyone on this list who was hired to do a job which had previously been done by somebody who was laid off on January 31st with the exception of the two or three people who happened to be on this list who [1464] were lay-offs?

A. With only the exception of two girls on here that are trying out for a sleeve girl; what Evelyn Hudson had been called back to do and was discharged by failure on that job.

Q. Who were they; those two?

A. Margie Edwards and Jessie Pearl Reed.

Trial Examiner: Who had originally done that sleeve job?

The Witness: That was done by, I believe, Mary Barnes and I believe Evelyn Hudson also helped out in her spare time.

Q. (By Mr. Thompson) Mr. Sharff, did you ever make a statement at a supervisor's meeting that you would close the plant if the union came in?

A. No, sir.

Q. What business are you now engaged in?

A. I am engaged in a small, retail business.

Q. Are you also still down at the Walton Manufacturing Company?

A. Yes, sir.

Mr. Thompson: Mr. Examiner, if we could take about a two-minute break, I think I may be about through with this witness. I would like to check my notes briefly.

Trial Examiner: We will have a five-minute break. Do not discuss your testimony.

(Recess had.)

Q. (By Trial Examiner) Mr. Sharff, were the speeches that you made at the Loganville Pants Company substantially the [1465] same speech as those which you made at the Walton Manufacturing Company which are set forth in the transcripts marked Respondents' Exhibits 89 and 90, respectively?

A. Yes, sir.

* * * * * * *

Q. (By Mr. Thompson) Mr. Sharff, I will ask you to refer to Charging Party's Exhibit No. 2, and I call your attention to the paragraph concerning Pearl Coker.

A. Yes, sir.

* * * * * * *

[1466] Q. (By Mr. Thompson) Will you state, please, Mr. Sharff, what was meant by the term "insufficient work," there?

A. Insufficient work refers directly to Pearl Coker, in the fact that she did an insufficient amount of work.

Q. Mr. Sharff, did you ever tell Lucille Yancey the first, who is an alleged discriminatee here, that if the union didn't get in, she could have her job back?

A. No, sir.

Q. Did you ever tell her anything like that?

A. No, sir.

Q. Anything to that effect?

A. No, sir.

Q. Has she ever been put back to work?

A. No, sir.

* * * * * * *

[1468] Q. (By Mr. Joy) Mr. Sharff, with respect to Pearl Coker, [1469] you refer to Louise Sammons being on leave of absence. Is it not true Louise Sammons had quit a month or two before?

A. No; she did not quit. When Louise Sammons left, I remember clearly, because Louise Sammons was a good operator, and I usually keep my eye on good operators. Louise had told me several days before that there wasn't sufficient work for her to work fairly full time. She was going to have to go somewhere else until such time as there was sufficient work for her to work at least four days a week.

Q. Was that so-called leave of absence for any particular length of time?

A. Until such time as we had sufficient work, which should have been showing up in January for the spring season.

Q. Is Louise Sammons listed on Respondents' Exhibit 9?

* * * * * * *

[1485] Q. That's drop of approximately how many?

A. That's a drop of 11. I am sorry; 14.

Q. Did you plan for this drop that far in advance?

A. This was a gradual elimination of operators due to the increased productivity of remaining operators.

* * * * * * *

[1487] Trial Examiner: None of the girls had signed that letter, had they, Mr. Sharff?

The Witness: No; there were no signatures on there. What she said to me was that she had not signed that letter, but she authorized the use of her signature, but she had never seen the letter before. The rest of the girls had seen the letter and acknowledged the contents of the letter.

* * * * * * *

[1489] Q. When you made your speech of December 3rd to the employees of Walton Manufacturing Company, you made known the facts that loans were available to the employees; isn't that a fact?

A. No, sir.

Q. I show you Respondents' Exhibit 89, and ask you to read it.

A. When you say "make known," you mean I announced that they could borrow money?

Q. Yes.

A. No. They knew that.

Q. When did you tell them about that?

A. The first loan that was lent was back in July, 1957.

Q. Did you get up and inform the employees of the fact?

A. No.

Q. How do you know the employees knew about it?

A. Because we had a substantial number of people; a small organization, borrowing money.

* * * * * * *

[1492] Q. (By Mr. Sheinkman) Am I to understand you correctly that the reason you made the second speech December 10th was that some people came to you and tried to find out whether you were for the union?

A. No, sir.

Q. What is your testimony in respect to that; on the second speech?

A. My testimony is that there were people that were uninformed as to whether or not they had to join the union in order [1493] to—had to sign the union card in order to continue to work for Walton Manufacturing Company, because they believed they had to.

Q. What did you tell them when they came to your office and asked you this question?

A. "I will let you know."

Q. About how many came to your office?

A. Half a dozen.

* * * * * * *

[1495] Q. Am I to understand your testimony that the first consideration of the company at the time in December—January 31 lay-off, was quality? That was the first factor considered?

A. Quality?

Q. Yes.

A. That was the first item.

Q. And the second factor was production; is that correct?

A. Yes.

Q. And the third factor was seniority; is that correct? [1496] A. No, sir.

Q. What was the third factor?

A. I think the third factor would be a tie between versatility and seniority.

Q. And these are the order in which you considered these matters; is that correct?

A. It depended upon the case.

Q. You varied the order, depending on each case; is that right?

A. We varied it, depending on the operation itself. Because some operations called for production, some called for quality.

Q. So quality, then, was not the first consideration?

A. I just said that we used the four things to judge a person by.

Q. Interchangeably.

A. Dependent upon the job.

Q. Am I to understand your answer, based on 20 years experience in the clothing industry, that a person who has never operated a high-powered sewing machine, can be easier trained to do a sewing job than a person who has operated such a machine?

A. In a great many cases; yes.

* * * * * * *

[1498] Q. (By Mr. Sheinkman) Am I to understand that you asked each employee with respect to General Counsel's Exhibit 5, that, "Do you know what this means"? Is that what you said?

A. No, sir.

Q. Did you say, "Do you realize what this means"?

A. No, sir.

Q. What did you say?

A. I said, "Do you know what this letter means?" "Do you know what this letter contains?"

Q. You added the word "contains"?

A. To the best of my recollection my words conveyed the meaning: Do you know what is contained within this letter?

Q. Those were your exact words as you recollect them.

A. No, sir.

Q. What are your exact words as you best recollect them?

A. I don't remember my exact words, sir.

Q. You could have said, "Do you realize what this means?"

A. No, sir.

Q. You could not have said it?

A. No, sir.

* * * * * * *

[1502] Q. Now am I to understand correctly that Lucille Yancey had a conversation with you in which she said she would vote against the union if you gave her her job back; is that right?

A. Yes, sir.

Q. What did you say to that?

A. "No."

Q. And after she said that, she said she would resign from the union, and what did you say to that?

A. "It wouldn't do any good."

Q. She made an offer to work for the company to get informa- [1503] tion about the union; is that correct?

A. Yes, sir.

Q. Is it your testimony at no time she ever gave you information about the union?

A. Other than that one conversation there I have related.

* * * * * * *

A. I testified that a good operator, with plenty of experience, would make between 60 and 65 a week.

Q. At the time that Pearl Coker was discharged, what were the other employees in her section earning?

A. The only other regular employee in her section was Hester McCart, and she was between 55 and 62, 63 dollars a week.

* * * * * * *

[1513] *Re-Direct Examination.*

Q. (By Mr. Thompson) Mr. Sharff, after you had these informal discussions with the various supervisors concerning the violence, and the union, did you ever have any reports come back to you that they were doing other than you had suggested to them?

A. No, sir.

Q. You were asked a few minutes ago about whether you had asked Violet Ewing to change her testimony.

What were the circumstances that you discussed with Violet Ewing, after she had testified here?

A. Well, the circumstances were that after she had testified, that her sister-in-law had said something—I forget what it is now. I went back to Myrtle Ewing and asked her did she say that, and she said "No," and then I asked Violet Ewing to come over—Violet Ewing said she was sorry she said that, so I asked her to come over here, and when she came over here I asked her was she sure whether she had said that or not, and [1514] she said, "Yes."

I said, "The reason I asked you to come over here is because I didn't want anything to come between you and your sister-in-law." "If that's what you said, now I don't wish you to change your testimony. I only want you to tell the truth."

And she said, "That's what I remember of Myrtle saying." That ended the conversation. I told her to go back to work.

* * * * * * *

Q. And did you on that occasion, as testified to by a number of witnesses here, take down the license numbers of the union organizers?

A. Yes, sir.

Q. What was your purpose in doing that?

A. Well, this was about the time that the organizers had first come into town, and J. B. Stevens told me that he saw [1515] some organizers—strangers up at Breeze Inn. So partially out of curiosity I went up to the Breeze Inn with "Murph"—

Q. I don't care why you went up there. What was your purpose in taking down the license numbers?

A. Well, having had a taste of threat of violence in New York, and also a threat just before I closed up my business in New York, I was very seriously concerned about not having a repetition of that down here.

Q. And in what way would the taking down of license numbers avoid violence?

* * * * * * *

[1516] Q. And what if anything did you do in connection with that to prevent, if you could, the union from coming into the plant?

A. Well, I would say that we took two steps; one negative and one positive. The negative step would be the speech. The positive step would be to speed up the training and the earnings of the girls in our shop.

[1517] It's my opinion, and that of my firm, that this locality here, if we could pay the girls, if we could make the girls earn substantially more than the minimum, and give them every benefit that they would get under a union, that we would not have a union shop.

We started to do that with hospitalization, insurance, vacation, and holiday pay. Our people today are making about 20% more than the surrounding plants. That's our defense against a union.

* * * * * * *

Q. And the letter which was posted on the bulletin board, General Counsel's Exhibit 9, was that also part of that plan?

A. No, sir. That was for clarification.

Q. Now I think in your direct testimony you characterized General Counsel's Exhibit 5 in evidence as a

demand for preferential treatment on behalf of certain union employees. Is that correct?

A. Yes, sir.

Q. And is that the way you characterized it?

A. I felt that this was a demand by the union not to dare fire these people under the threat of a National Labor Board case, particularly inasmuch as they indicated that a copy had [1518] been sent to the National Labor Board.

Q. Was there anything in the letter which demanded that you not fire any employees?

A. I—At that time I didn't know what Section 8 (a) (3) was, but it says they are protected to their rights to join and assist the union, and this to me meant that you couldn't fire these people unless you had much more reason to fire them than an ordinary employee in the plant, because it implied the threat that if you did, that you would be hauled before the National Labor Board.

Q. And therefore you considered it a demand for preferential treatment

A. Yes, sir.

Q. Merely by the fact that it was called to your attention that these persons were active in the union campaign?

A. Yes, sir. No, no; not that, but by reason that it indicated that a copy have been sent to the National Labor Board, and I believe, after receiving this letter, that I did speak to our law firm, and it was pointed out to us that if we did fire these people, we would be running a risk of a National Labor Board case.

Q. Now at the time this letter was received by you, no announcement had been made of any lay-off, had there?

A. No.

Q. And these employees, as far as they knew, didn't know of [1519] any impending lay-off, did they?

* * * * * * *

[1520] A. At that time we didn't anticipate a reduction of force, because we anticipated a good spring season. Because that was back—may I add something to that, sir?

Q. Yes.

A. Well, that speeding up the operator: It was not a question of taking a girl who was making $35 a week and having to pay her $5 a week. It was much more important to take the girl who was making $42 and push her production up to the point where she was making $48 or $50, because we still wanted operators to make between $45 and $60 a week. We did then, and we still do.

Q. Now did you, after this knowledge of union organization, undertake to instruct your supervisors as to their conduct in the plant?

A. Only in an informal manner.

Q. Did you instruct them formally or informally?

A. Informally.

[1521] Q. What instructions did you give them?

A. I told them that I felt that there might be some type of violence. I didn't want them to have any part of it, or do anything to instigate it. And as far as talking for or against the union, I didn't even want them to talk about the union. I was interested in production and plant quality, and that was their job.

1 Before the National Labor Relations Board

TENTH REGION

Case Nos. 10-CA-3127, 10-CA-3201, 10-CA-3219

IN THE MATTER OF WALTON MANUFACTURING COMPANY AND AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

Case Nos. 10-CA-3202, 10-CA-3218

LOGANVILLE PANTS COMPANY AND WALTON MANUFACTURING COMPANY AND AMALGAMATED CLOTHING WORKERS OF AMERICA AFL-CIO.

Excerpts of transcript of testimony

COURTROOM, SECOND FLOOR,
WALTON COUNTY COURTHOUSE,
MONROE, GEORGIA,
Wednesday, October 15, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: Samuel Ross, Trial Examiner.

Appearances: Arthur C. Joy, Esq., Peachtree-Seventh Building, Atlanta, Georgia; appearing on behalf of General Counsel.

Jacob Sheinkman, Esq., 15 Union Square, New York City, New York; appearing on behalf of Amalgamated Clothing Workers of America, AFL-CIO, the Charging Party.

Robert T. Thompson, Esq., 615 Rhodes-Haverty Building, Atlanta, Georgia; appearing on behalf of the Respondents.

* * * * *

145 Mrs. FRANCES ELIZABETH POWELL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * *

147 DIRECT EXAMINATION

TRIAL EXAMINER. I didn't understand you. When did you start for the company—to work for the company?

The WITNESS. It was around July the 1st, I think—July the 1st.

TRIAL EXAMINER. July 1st; and what is this incident that happened a day or a day and half before Lucille Yancey was laid off that you were referring to a minute ago?

Mr. JOY. The question was: when was an operation change made—in her operations.

TRIAL EXAMINER. A change was made in your operations a day or a day and a half before Lucille Yancey was laid off?

The WITNESS. Yes, sir.

TRIAL EXAMINER. All right.

By Mr. JOY:

Q. What changes were made?

A. I was put back at the back with Grace Higgins as my supervisor and I made the linings and put on the facings of the inside pockets.

Q. And how long did you stay on that?

A. About a day and a half.

Q. Then what did you do?

A. I was put on Lucille Yancey's job.

Q. What was that?

A. That was sewing darts in the linings and sewing
148 the facings on to the linings.

TRIAL EXAMINER. What was that first word you said?

The WITNESS. Darts.

TRIAL EXAMINER. Darts?

The WITNESS. Sewing darts in the linings and then sewing the facings to the linings.

TRIAL EXAMINER. All right.

* * * * *

358 VIOLET EWING, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

359 TRIAL EXAMINER. State your full name and address for the reporter.

The WITNESS. My name is Violet Ewing. And I live in Loganville, Route 2.

* * * * *

360 Q. Did you do any other operations?

A. Prior to that; yes.

Q. What were they?

A. Well, I worked, trimmed collars, marked collars, and basted them, cut pockets and sewed pocket facings.

* * * * *

369 Q. Did you ever go back to work for Walton Manufacturing Company?

A. Yes.

Q. When?

A. October 7, 1958.

Q. Who did you talk to when you went back there?

A. "Murph."

Q. Anyone else present?

A. Grace Higgins.

Q. What was said?

A. Well, Mr. "Murph" told me that they had an opening and they were going to put me back to work. He said I would be a utility girl.

Q. Did he make any comments about your work?

A. No. The only thing, he told Grace that I was a good operator, and I wouldn't give her any trouble.

* * * * *

385 GRACE MCCART, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

397 Q. And were you put back to work at that time?

A. I went back to work March the 3rd.

Q. Have you been working there since?

A. Yes, sir.

398 Q. Have you been doing the same type of work that you were doing before?

A. Yes, sir.

Q. Operating the same type of machine?

A. Yes, sir.

Q. Have you done the work the same as you did before?

A. Yes, sir.

Q. Have you used the same color of thread that you did before?

A. Yes, sir.

* * * * *

403 BONNIE HAMILTON, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * * *

427 Redirect examination by Mr. JOY:

Q. Mrs. Hamilton, Mr. Thompson was asking you about the meetings you attended. Did you attend any at any place other than Rosebud Community House?

A. Yes; I did.

Q. Where were they?

A. Well, I attended one at Lucy Brook's home. I attended one at Violet Ewing's, and there were also one at my house.

Q. Now can you place the dates of those?

A. No; I can't.

Q. Were they before or after the meetings held at Rosebud?

A. They were after.

Q. After the first one, or after the last one?

A. After the last one, I believe.

Q. Referring to the three held in the three homes, which one was held first?

A. Lucy Brooks.

Q. And which one was second?

A. Violet Ewing's.

Q. And yours, of course, was the third.

A. Yes.

Q. How long after the Rosebud meeting was the one held at Lucy Brook's? Approximately how long?

A. Oh, I would say three or four weeks.

428 Q. And how long after that was the one at Violet Ewing's?

A. Approximately three weeks.

Q. And the one at your house?

A. About the same time, I think.

Q. After the one at Violet Ewing's, you mean?

A. Yes.

Q. Were those held before or after you were laid off on January 31st?

A. They were held before, to the best of my knowledge.

* * * * *

519 NELLIE HOOD, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

TRIAL EXAMINER. Give your name and address to the reporter.

The WITNESS. My name is Nellie Ruth Hood. I live at Jersey, Georgia, Box 62.

TRIAL EXAMINER. Off the record.

(Discussion off the record.)

TRIAL EXAMINER. Proceed.

By Mr. JOY:

Q. When did you start working for Walton Manufacturing Company?

A. July 1.

TRIAL EXAMINER. July 3?

The WITNESS. 1st.

Q. 1957?

A. 1957.

Q. And what was your job when you first started?

A. I was marking for the welt pockets, patch pockets, matching the pockets with the front of the coat and carrying bundles to the girls.

Q. And when you say marking pockets and so on, what does that mean?

A. It was marking the welt pockets on the coat and

520 patch pockets.

Q. You mean marking on the coat the place where the pocket was to be sewed?

A. Yes, sir.

Q. And when you say that you were matching things, what does that mean?

A. I matched the pockets to the—the pockets to be sewn on the coat to the front of the coat.

Q. That's the proper material. Is that correct?

A. (Nods head affirmatively.)

Q. How long did you work on that?

A. I would say around three or four months.

Q. You may have told us this before, but what, if anything, did you do in addition to marking the pockets, matching the pockets?

A. Carrying the bundles.

Q. Carrying the bundles. All right. What did you do after three or four months. What were you changed to?

A. I was matching the backs with the fronts of the coats.

Q. And did you continue to carry bundles?

A. Yes.

* * * * *

539 RUTH BROOKS, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

545 Q. Who did the pocket repair work?

A. I did.

Q. Did you do only your own work; repairs on your
546 own work, or did you do repair for work done by others?

A. I did all repair work on back pockets.

* * * * *

547 Q. Who was your forelady at the pants plant?

A. Edna Atha.

Q. And did you have any discussion with her about the make-up?

A. Yes. Some time in January when our checks were given us there was a bunch of us weren't—we were around my machine, and we were discussing having so much make-up, and she came up and wanted to know what the trouble was, and we told her we couldn't understand why we had so much make-up when we had nothing to do and were switched from one thing to another, and just about that time the bell rang for lunch. So after lunch she came back to my machine and she said, "Ruth, I have told Mr. Hughley what you said about your make-up, and he said as long as he didn't say anything to you, for you not to worry; that he knew that work was short."

Q. Can you place the date of that?

A. It was on—around the 9th or the 10th of January.

* * * * *

1012 GRACE HIGGINS, a witness called by and on behalf of Respondents, being first duly sworn, was examined and testified as follows:

* * * * *

1046 CROSS-EXAMINATION

1058 Q. In the case of Evelyn Hudson, did she not perform more than one operation?

A. Yes.

Q. How about Grace Barnes; at the time of the lay-off was she performing more than one operation?

A. No.

Q. How about Bonnie Thompson? Was she performing more than one operation?

1059 A. I do not know about Bonnie Thompson—excuse me. No; she was only doing one operation.

* * * * *

1145 I. S. PROSTERMAN recalled as a witness on behalf of the Respondents, having been previously duly sworn, was examined and testified further as follows:

* * * * *

1146 DIRECT EXAMINATION

* * * * *

1180 By Mr. THOMPSON:

Q. Now what were the factors which led to Pearl Coker's discharge?

A. Pearl Coker had showed unsatisfactory progress, and in view of the fact that Hester Lou McCart and the operator formerly on the job who had left us——

Q. Who was that?

A. That was Louise Sammons. In view of the fact that these two operators showed a much greater production, and better quality.

Q. Was Louise Sammons working there at the time Pearl Coker left?

A. At that time; no.

By TRIAL EXAMINER:

Q. Did you fire or lay off Pearl Coker?

A. Pearl Coker was discharged.

Q. When did you discharge her?

1181 A. January 17th.

TRIAL EXAMINER. All right. Mr. Thompson.

By Mr. THOMPSON:

Q. Who fired Pearl Coker?

A. I did.

Q. Are you familiar with Pearl Coker's record on make-up pay?

A. Yes, sir; I am.

Q. Are you familiar with Hester Lou McCart's record on make-up?

A. Yes, sir; I am.

Q. Was there any comparison between the make-up of those two people involving the lay-off or the discharge of Pearl Coker?

A. Well, the comparison was that Hester Lou McCart had no make-up. In fact she had a very good earning record; production record; whereas Pearl Coker was constantly on make-up.

By TRIAL EXAMINER:

Q. Was make-up a factor in discharging Pearl Coker?

A. Yes, sir; it was.

* * * * *

1220 Q. Do you recall an employee by the name of Nellie Wood?

A. Yes; I do.

Q. What did Nellie Wood do?

A. Nellie Wood worked principally on two operations. She did part of an operation known as edge basteing, and part of her day was taken up by an operation known as edge taping, on which there were two full time employees.

Q. Now were these other two employees doing the same thing that Nellie Wood was doing?

A. Yes.

Q. Were they both doing both edge taping and edge basteing?

A. No. Johnny Starrett was doing edge taping. Laverne Bowen was doing edge basteing. Nellie Wood was assisting on

both jobs. She did part of her day on one job and part of her day on the other.

By Trial Examiner:

Q. She was more versatile than the other two, eh?

By Mr. Thompson:

Q. Subsequent to the—Was Nellie Wood ever discharged or laid off?

A. Nellie Wood was laid off on January 31, 1958.

Q. Subsequent to that time, who performed the work that she was doing prior to that time? After she was laid off, who did the work that she was doing before that time?

1221 A. No one.

Q. Who did the edge taping after that time?

A. Johnnie Starrett.

Q. And who did the edge basteing?

A. Laverne Bowen.

Q. And who did the third job of helping both of them?

A. These operators didn't require any help. For a period of approximately a month. At which time we increased the operation of Laverne Bowen to include the bottom hem basteing and at that time we gave her assistance with the operator which immediately followed Laverne Bowen's operation. This operator's name was Geraldine Lacey.

Q. What were the factors which led to the decision to lay off Nellie Wood?

A. With Nellie Wood it was simply a question of cutting back, because we didn't need Nellie Wood in that particular operation. We didn't need her production. And since the other two girls had been on the job a longer period of time, we had no reason to retain her.

Q. Since the lay off on January 31st, who if anyone has done the work which Nellie Wood was doing, and no other work?

A. No one.

Q. In reaching your decision to lay off Nellie Wood, as opposed to other people, did you take into consideration any other employees other than Starrett and Bowen?

1222 A. No, sir.

* * * * *

* * * * *

1249 By Mr. JOY:

Q. Now after Ida Harper was terminated, laid off, you said that Geneva Harris took over her operation for a while, and then Charlotte Finley took over part of the operation; is that right? Did Charlotte Finley have any experience using the Lewis blind stitch machine?

A. Not very much.

Q. Did she have any?

A. Prior to her doing that work, no. No experience at all.

* * * * *

1265 I. S. PROSTERMAN resumed the stand, was examined and testified further as follows:

CROSS-EXAMINATION (CONTINUED)

* * * * *

1300 Q. Annie Brooks leave?

1301 A. No; she was discharged.

Q. She was discharged. What was the reason for her discharge?

A. Poor quality, and lack of production.

Q. Was this a thing that she had difficulty with before the time she was discharged?

A. That who had difficulty with?

Q. Annie Brooks.

A. Well, we have never mentioned Annie Brooks before.

TRIAL EXAMINER. The question is how long had you had trouble with Annie's quality and production?

The WITNESS. Well, fairly constant.

* * * * *

1359 MORRIS SHARFF, a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER. Give your full name and address to the reporter.

The WITNESS. Morris Sharff; 3322 Roxboro Road, NE., Atlanta, Georgia.

* * * * *

1370 By Mr. THOMPSON:

Q. Now going back to the January 31st lay-off. When did you first start getting wind of this reduction in your production requirements?

A. Well, we do that right around Thanksgiving; the first of December because the men had been out on the road
1371 travelling for about six weeks, and the number of orders that were coming in were substantially lower than past experience, and you could make a projection at that time as to what you would normally expect your season to end up, and as you go along, you keep making your projections, and the deeper you get into the season, the more accurate your projections are.

Q. Was there anything done with respect to the work force when you began to get your reports and make your projections?

A. No. We still kept the work force intact, hoping that our original projection would prove wrong.

Q. Now did you give any instructions to anybody with respect to the possibility of a lay-off?

A. Yes. I spoke it over very seriously with "Murph" and told him of what I thought the position would be after the first of the year, and I asked him to think about it, and see what he thought would be the proper thing to do to set up the shop, what steps to take in order to reduce the production of the shop to 300 garments a day.

Q. What did he do, if anything, after that, in connection with this?

A. Well, we conferred about it until about the 10th or the 15th of December, and I went to New York for about 10 days, and when I came back there was an outline prepared—not really a report, but more or less a few notes——

Q. Have you seen General Counsel's Exhibit 19?

1372 A. Yes, sir.

Q. Is that the notes that you are talking about?

A. Yes, sir.

Q. When did you see that?

A. "Murph" handed that to me right after I came back from New York, which was three or four days before New Year's Day.

Q. What month was that?

A. December 1957.

TRIAL EXAMINER. That would be about December 26th or 27th?

The WITNESS. About the 28th.

By Mr. THOMPSON:

Q. When was the decision made to go through with the lay-off?

A. The decision—what actually happened there was we waited several weeks in January before finally putting it into effect, even in our own minds, hoping again that the salesmen would send in orders the first part of January.

TRIAL EXAMINER. Now Mr. Sharff, these questions that Mr. Thompson is asking you are capable of very short answers, and when you are asked a question that asks for a date, give the date. Mr. Thompson is very competent counsel. He will ask all the questions to bring out the other testimony.

The WITNESS. I am sorry.

A. About the 15th of January.

TRIAL EXAMINER. The decision to lay off was made about the 15th of January?

1468 Cross-examination by Mr. JOY:

* * * * *

1485 Q. Prior to the receipt of the letter sent by the union, marked in evidence as General Counsel's exhibit 5, did you inform the employees there would be a general lay-off in the plant?

A. No, sir.

Q. Did you ever discuss any of the individuals who
1486 were laid off the 31st of January, 1958, with the supervisors, in the month of December?

A. No, sir.

Q. Did you inform any of the supervisors there would be a lay-off in the month of December?

A. No, sir.

Q. When was the first time you informed your supervisors of this fact?

A. We informed the supervisors about the 10th of January of the possibility of the lay-off.

Q. Of a possibility.

A. Yes.

TRIAL EXAMINER. Do you include Mr. Prosterman in the term "supervisor"?

The WITNESS. No, sir.

By Mr. SHEINKMAN:

Q. Am I to understand you correctly with respect to General Counsel's Exhibit 5 you asked each of the girls individually whether or not they had authorized the signing of the letter; is that right?

A. Not all of them.

Q. Did you ask Jeanette Beaver that question?

A. Yes.

Q. Didn't you deny it—didn't she deny it?

A. She said she did not sign that letter.

Q. Didn't you put a dash next to her name instead of a check?

1487 A. Yes, sir.

Q. She was one of the girls who was not laid off; is that right?

A. Yes.

TRIAL EXAMINER. None of the girls had signed that letter, had they, Mr. Sharff?

The WITNESS. No; there were no signatures on there. What she said to me was that she had not signed that letter, but she authorized the use of her signature, but she had never seen the letter before. The rest of the girls had seen the letter and acknowledged the contents of the letter.

TRIAL EXAMINER. Continue.

By Mr. SHEINKMAN:

Q. But there was a check mark made to the other names, other than Jeanette Beaver's name; is that right? You put a dash next to hers.

A. There were three that had no mark at all.

Q. Was there a dash next to Jeanette Beaver's name?

A. Yes.

Q. You put that dash there.

A. Yes.

Q. And then you posted the letter on the bulletin board.

A. Yes.

* * * * *

1501 By Mr. SHEINKMAN:

Q. You said that Frances Johnson's work was satisfactory; is that right?

A. Essentially; yes.

Q. You never warned her about her bad work.

A. As far as I was concerned, she didn't do a lot of bad work.

* * * * *

1513 REDIRECT EXAMINATION

* * * * *

1514 By TRIAL EXAMINER:

Q. Mr. Sharff, I think there was testimony here to the effect that a person by the name of Stevens, who was employed by you in a maintenance capacity—is that correct?

A. Yes, sir.

Q. Do you recall an incident at the Breeze Inn?

A. Yes, sir.

Q. And did you on that occasion, as testified to by number of witnesses here, take down the license numbers of the union organizers?

A. Yes, sir.

Q. What was your purpose in doing that?

A. Well, this was about the time that the organizers had first come into town, and J. B. Stevens told me that he
1515 saw some organizers—strangers up at Breeze Inn. So partially out of curiosity I went up to the Breeze Inn with "Murph"——

Q. I don't care why you went up there. What was your purpose in taking down the license numbers?

A. Well, having had a taste of threat of violence in New York, and also a threat just before I closed up my business in New York, I was very seriously concerned about not having a repetition of that down here.

Q. And in what way would the taking down of license numbers avoid violence?

A. Well, I wanted to find out who the people were.

Q. Now then, do you own a 1956 green Plymouth?

A. Yes, sir. I did at the time.

Q. And did you turn that car over to Mr. Stevens that afternoon?

A. Well, the car was there for the disposal of anyone that wanted to use it. He ran a lot of errands.

* * * * *

1529 *Charging Party—Exhibit No. 2*

WALTON MANUFACTURING CO.

FINE BOYS, STUDENTS AND MEN'S CLOTHING

Phone: 3341

LOGANVILLE, GEORGIA,
April 15, 1958.

WILSON, BRANCH AND BARWICK,
Rhodes Haverty Building,
Atlanta, Georgia.
(Att: Mr. John Wilcox).

DEAR JOHN: I am enclosing a list of employee earnings, which you may find helpful.

* * * * *

1530 *VIOLET EWING* #30, her discharge was in order due to the versatility of the other operator, Margaret Britt, #23, which replaced Violet Ewing's operation. In other words, there was only enough work for one of the two operators and one operator, we felt, could handle the job better, being that her own work was a more highly skiller character.

* * * * *

FRANCES JOHNSON #42 was being held to an average pay to learn a new job and, after several months, she had shown practically no improvement. Therefore, inasmuch as her job was mechanical, it was absorbed by other operators.

* * * * *

NELLIE WOOD #84, with regards to this operator, this was purely a question that a cutback had to be made in this department, due to the lack of production and the quality of her work was not equal to the standards of quality demanded on the particular job and given by the rest of the operators.

* * * * *

1531 Cordially yours,

WALTON MANUFACTURING COMPANY,
MORRIS SCHARFF.

MS:vp.

1532 In United States Court of Appeals for the Fifth Circuit

No. 18198

NATIONAL LABOR RELATIONS BOARD

v.

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY

Minute entry of argument and submission

October 4, 1960

On this day this cause was called and, after argument by Russell Specter, Esq., Attorney, National Labor Relations Board, for Petitioner, and Robert T. Thompson, Esq., for Respondents, was submitted to the Court.

1533 In the United States Court of Appeals for the Fifth Circuit

No. 18198

NATIONAL LABOR RELATIONS BOARD PETITIONER

v.

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY, RESPONDENTS

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, SITTING AT WASHINGTON, D.C.

Before JONES, Circuit Judge, and HOOPER and JOHNSON, District Judges

Opinion

January 6, 1961

JONES, *Circuit Judge:* The National Labor Relations Board, by this proceeding, seeks enforcement of its order [1] against the Respondents, Walton Manufacturing Company and Logan-

[1] 124 N.L.R.B. 1331.

ville Pants Company. The Board found that the Re-
1534 spondents interfered with, restrained and coerced their employees by surveillance of union activities, threatening reprisals for union adherence and interrogating employees concerning union affairs. The Board's order directs that the Respondents cease and desist from engaging in these practices. The Board found that the Respondents had discharged four employees and terminated the employment of nine others because of their union activities. The Board's order directs that employment be offered to such of these discharged and terminated employees as had not been rehired and that all of them be made whole for any loss of earnings sustained by reason of their having been discharged or having had their employment terminated. The conventional provisions for making Respondents' records available to the Board, and for the posting of notices were included in the order. The Board states that the only question for our consideration is whether there is substantial evidence on the record as a whole to support the Board's findings. This is certainly important and may be controlling.

As we must do in these "substantial evidence" cases, we have undertaken the tedious task of reading the record and reviewing the evidence; tedious because of the necessity of going from the Board's appendix to the employer's appendix, and so back and forth from one to the other, in an effort to piece together the isolated excerpts of testimony which each party has extracted for the purpose of supporting the position for which it contends. The Board incorporates into its appendix
nineteen separate quotations from the testimony of the
1535 witness, Morris Scharff, and the employer includes thirty-seven selections from the testimony of this witness. The same is also true, to a lesser degree, with respect to the testimony of twenty-five or more of the other witnesses. Our decision is to be based upon the record considered as a whole. Parts of the record, taken out of context, are not to be considered piecemeal, but we are to consider the record in its entirety and as a unit. This we have attempted to do.

The Board found that the Respondents interfered with, restrained and coerced their employees in violation of Section 8 (a)(1) of the Act.[2] The personnel matters of the Respondents were entrusted to Morris Scharff. That he was possessed of an

[2] 29 U.S.C.A. § 158(a)(1).

anti-union bias is well established, and the Respondents are not to be penalized because of his beliefs. N.L.R.B. *v.* McGahey, 5th Cir. 1956, 233 F. 2d 406. Nor will the absence of affection of the union management for Scharff, which was also demonstrated, result in any benefit to the Respondents. Morris Scharff made talks to the employees during the period when the union was attempting to organize the Respondents' plants. He related some of his unpleasant experiences with the union during the time he was operating a plant in New York. In the brief of the Board it is stated that "Scharf told the employees, in effect, that he would shut down the plant rather than deal with the union." Although some of the witnesses for the Board's General Counsel testified that Scharff had made such statements, the Examiner became satisfied that the tape recordings, providentially made, and written transcriptions of them, were "substantially accurate reproductions of what was said. * * *" The examiner concluded that the statements of Morris Scharff were, to use the phrase in the Examiner's report, "protected free speech," with the exception of the conclusion of the speech [3] in which Scharff said:

1536

"* * * remember I have no association with this Company, officially. I hope to have in the near future, but if you want a union shop, you are going to have it without me, because I have had my stomach full of unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it."

Upon the above quoted statement the Examiner finds that Scharff had threatened to close the plant rather than deal with the union. Although the father and brother of Morris Scharff were officers, directors and stockholders of the Respondents, Morris Scharff himself was neither officer, director nor stockholder. We find no basis for an inference of a threat to close the plant in the statement of Scharff that if the employees have a union shop they will have it without him, and that he will have no part of it. Notwithstanding the extent to which Morris Scharff may have exercised the functions of management, or have been regarded by the employees as the boss, that which he said cannot fairly be interpreted to mean something

[3] Morris Scharff made several speeches, all from the same notes and all of substantially the same content.

so different as the meaning which the Examiner has found.

Some of the employees gave categorical testimony that
1537 Scharff's speeches did contain direct statements that he would close the plant rather than deal with the union. The Examiner concludes that this testimony was the interpretation of Scharff's quoted remarks, and the Examiner says that the employees did reasonably interpret the remarks as a threat to close the plant. If it be suggested that, instead of making reasonable interpretations, these employees merely demonstrated that they had faulty memories, and their statements as to other matters were to be regarded with suspicion, the answer to such a suggestion would be that credibility is a matter entrusted to the Examiner and the Board and they have fully credited the testimony of the employees and have found Morris Scharff unworthy of belief.

Although there was not any evidence, substantial or otherwise, to support the finding that Morris Scharff, in his talks to employee groups, threatened to close the plants, we cannot say the same with respect to other findings of interference, restraint and coercion. A letter was sent to employees outlining the Respondents' policy as to life insurance, hospital and medical insurance, paid vacations and overtime. Hope of inaugurating a pension plan was declared. The letter stated:

"We are happy that no employee has to pay dues or initiation fees to any outside union to work at these plants. You will not be forced to make payments to outsiders for the privilege

of working here. What earnings you make here are
1538 yours. No part goes to organizers." A union organizer was followed as he called upon Respondents' employees at their homes. Direct as well as veiled threats of discharge for joining the union were made by a supervisor to employees. There was interrogation by supervisors of employees as to their activity and that of others with respect to the union. The testimony as to some of these matters was controverted. The resolving of evidentiary conflicts is within the province of the Board. Some of the conduct of the Respondents which the Board has condemned might, if isolated from the other facts shown, be regarded as not being in violation of the prohibitions against interference, restraint and coercion. We cannot say that the totality of the evidence, the substantial evidence on the record as a whole fails to support the Board's finding of interference, restraint and coercion. The "cease and desist"

portion of the Board's order, modified as hereinafter provided, will be enforced.

Among other things, the Board's order provides that the Respondents shall cease and desist from:

"Discouraging membership in and activities on behalf of Amalgamated Clothing Workers of America, AFL–CIO, or in any other labor organization of its employees, by *discharging or refusing to reinstate any of its employees, or in any other manner* discriminating in regard to their hire or tenure of employment, or any other term or condition of employment." [Italics supplied.]

Since, as is hereinafter set out, it is determined that substantial evidence is lacking for the Board's findings
1539 that the Respondents discriminatorily discharged and refused to rehire employees because of their union activity, we reach the conclusion that the italicized portion of the order, as quoted above, should be omitted.

The Board's order also directed the Respondents to cease and desist from:

"Following or otherwise engaging in surveillance of union organizers, or *creating the impression of* engaging in surveillance of union meetings; threatening employees with discharge, shutdown of the plant or with other economic sanctions to discourage union affiliation or adherence; coercively or otherwise unlawfully interrogating employees regarding their union membership or activities; conditioning the reemployment of laid off employees upon a union not becoming the representative of the employees; or in any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organizations, to join or assist Amalgamated Clothing Workers of America, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act." [Italics supplied.]
1540 If the Respondents are required to refrain from engaging in surveillance of union meetings the purpose of the Act

will be served without imposing upon them a duty to avoid creating an impression. "Impression" is an equivocal term, it is "an indistinct or indefinite notion, remembrance, belief or opinion." Paramount Film Distributing Coporation v. City of Chicago, D.C.N.D. Ill 1959, 172 F. Supp. 69. Unlawful interference may be found from inferences based on facts disclosed by evidence, but not upon impressions made upon the employees, unless made by acts or words of the employer, and then it is the acts or words that are violative of the law. The italicized words in that portion of the order last quoted above should be deleted.

During the period between December 4, 1957, and January 16, 1958, the Respondents discharged four employees, Lucille Yancey, Grace McCart, Pearl Coker, and Ruth Brooks. The Board found that they were discharged for union activity, in violation of Section 8(a) (3) and (1) of the Act. Reinstatement of those who had not been rehired, and payment of lost earnings were ordered. We are again confronted with the difficult task of determining whether the motive for the discharge of employees is a proper one or whether it was prompted by the activity of the employees on behalf of a union. Cf. N.L.R.B. v. Redwing Carriers, Inc., 5th Cir. 1960, * * * F. 2d. * * * The requirements of substantiality of evidence and reasonableness of the inferences to be drawn from the evidence are not less in a case of reinstatement and reimbursement than where
1951 a cease and desist order is directed against interference. See N.L.R.B. v. Ingram, 5th Cir. 1960, * * * F. 2d * * *; N.L.R.B. v. Tex-O-Kan Flour Mills Co., 5th Cir. 1941, 122 F. 2d 433. In the determination of whether there is substantial evidence and whether inferences are justified, a closer scrutiny of the record than might otherwise be required becomes necessary where, as here, questionable inferences have been drawn and where, as here, the Examiner has uniformly credited all of the General Counsel's evidence and generally disbelieved all of the employer's evidence. N.L.R.B. v. Miami Coca-Cola Bottling Co., 5th Cir. 1955, 222 F. 2d 341. Cf. N.L.R.B. v. Casco Products Co., 5th Cir. 1960, 280 F. 2d 905.

We are aware of the requirement that we are not to overturn the Board's findings if supported by substantial evidence on the record as a whole. We recognize the principle that the substantial evidence rule applies to the choice of inferences as well as to the finding of facts as facts. N.L.R.B. v. Birming-

ham Publishing Co., 5th Cir. 1958, 262 F. 2d 2. We do not question the settled doctrine that the Court should not, as a general proposition, disturb the action of the Examiner and the Board in crediting or discrediting the testimony of a witness. N.L.R.B. v. West Point Manufacturing Co., 5th Cir. 1957, 245 F. 2d 783; N.L.R.B. v. Newton Co., 5th Cir. 1956, 236 F. 2d 438. It is not, however, required that the Examiner's findings be given more weight than reason would dictate and, in the light of judicial experience, they deserve. Universal Camera Corporation v. N.L.R.B., 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456. This Court has had frequent occasion to announce and develop the doctrine that if
1542 it appears that there is substantial evidence on the record as a whole to make the inferences of legal and illegal discharge reasonably equal, we may not overturn the Board's finding of an illegal discharge. N.L.R.B. v. Dan River Mills, Inc., 5th Cir. 1960, 274 F. 2d 381, N.L.R.B. v. Fox Manufacturing Co., 5th Cir. 1956, 238 F. 2d 211; N.L.R.B. v. Newton Co., 5th Cir. 1956, 236 F. 2d 438; N.L.R.B. v. McGahey, 5th Cir. 1956, 233 F. 2d 406; N.L.R.B. v. Coats & Clark, Inc., 5th Cir. 1956 231 F. 2d 567; N.L.R.B. v. Houston Chronicle Publishing Co., 5th Cir. 1954, 211 F. 2d 848. The clarification of this rule, as stated in the Houston Chronicle case, by the opinion in Coats & Clark, has not modified the principle that an unlawful motive is not lightly to be inferred. N.L.R.B. v. Dan River Mills, Inc., supra; N.L.R.B. v. Hudson Pulp & Paper Corporation, 5th Cir. 1960, 273 F. 2d 660; N.L.R.B. v. Fox Manufacturing Co., supra.

The burden of proof rests upon the Board's General Counsel to establish by acceptable substantial evidence on the record as a whole that discharges came from the forbidden motive of interference in the exercise of the statutory rights of the employees. N.L.R.B. v. Winter Garden Citrus Products Cooperative, 5th Cir. 1958, 260 F. 2d 913, and cases there cited. See also N.L.R.B. v. Birmingham Publishing Co., supra, and cases there cited, and N.L.R.B. v. Redwing Carriers, Inc., supra. Whenever the General Counsel's burden is not carried, and whenever the inferences of fact are not reasonably permitted by the substantial evidence, it is the duty of the reviewing court to displace the Board's finding of unlawful motive.

1543 There was much evidence for the Respondents that the work of the discharged employees was unsatisfactory and that this was the sole reason for the discharges. Much of this testimony, of course, was from management, but like testimony was given by other employees and, it may be said, by the testimony in some instances of the discharged employees with respect to their own work. The first of the four employees to be discharged was Lucille Yancey whose employment was terminated on December 4, 1957. We are informed by the Board's brief that she "joined the union about ten days before her discharge and immediately became very active in its affairs." Her activity consisted of her receiving several visits from union organizers and promising to give the union a list of employees' names. It is not shown that this promise was kept. She did no soliciting of members for the union. She testified, and reiterated her testimony, that no union meetings were held until after her discharge. Since a union meeting was, in fact, held on the day before she was discharged, her testimony indicates both a lack of knowledge of the activities of the union and a lack of interest in such activities. She attended two meetings after she was discharged. The Board, in its brief, tells us that Mrs. Yancey told Morris Scharff, on the day of her discharge or the following day, that she would "abandon her union activities if she could return to her job." What she said she told Scharff was that if he would give her back her job, "I won't vote for the union." At this interview Mrs. Yancey told Scharff that she had not been helping organize the plant. None of her superiors ever discussed the union with her while she was an employee. She
1544 quoted Scharff as telling her that he did not know whether she had signed a union card. It seems apparent that in the preparation of the Board's brief ardor has outrun accuracy.

Mrs. Yancey testified as to her skill as an operator and of the compliments she had received for her excellent work. The superintendent, I. S. Prosperman, the supervisor, Grace Higgins, and several of Respondents' employees testified otherwise. Of this testimony, the Examiner and the Board discredited, for the most part, that which was favorable to the Respondents and credited that which was unfavorable to them. It was pretty clear, though, that Mrs. Yancey had considerable trouble in sewing in the linings of coats. The

Examiner was persuaded that this was not due to any lack of ability on the part of Mrs. Yancey, but rather to the skimpy cut of the linings. Mrs. Yancey admitted making the request for the linings to be cut longer, but only for the purpose of making it easier on her. Proper and satisfactory garments, she said, were being made with the linings as furnished. There was evidence, credible and credited, that Mrs. Yancey's work was not in all respects satisfactory. Applicable here are the following principles:

"The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and on the other hand, the Board is not entitled to make its authority a pretext
1545 for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion." N.L.R.B. v. Jones & Laughlin Steel Corporation, 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A.L.R. 1352. See N.L.R.B. v. McGahey, supra.

The Examiner has found that the Respondents knew or believed that Mrs. Yancey was a strong union adherent. The Board, in its brief, urges that "In view of respondents' demonstrated hostility to the union, and its surveillance of union activities, there was ample basis for the Board to find * * * that Yancey was known or believed by respondents to be an active union adherent, and that this was the reason for her discharge." The difficulty with the Board's position is that the evidence which the Examiner has credited, as well as that which he has discredited, shows that Mrs. Yancey was not at all active in her union adherence and no evidence, whether or not credited, tends to show otherwise. The visits of union organizers to Mrs. Yancey's home do not support a finding of union activity on her part. Nor does the anti-union feeling of the Respondents so change the character of the evidence as to require or permit the inference of wrongful discharge which the Examiner and the Board draw. The opposition of an employer to union organization, and restraint, coercion and interference are not enough to make the discharge of an employee a wrongful one. N.L.R.B. v. Hudson Pulp & Paper Corporation, supra; N.L.R.B v. McGahey, supra. Anti-union bias, while a factor in evaluating tes-

timony, does not supply the element of purpose.
1546 That element must be established with respect to each discharge. N.L.R.B. v. Dan River Mills, Inc., supra. The finding that Mrs. Yancey was discharged because of union activity was, it appears, based upon suspicion and conjecture. Such a finding, so based, cannot be sustained. N.L.R.B. v. Drennon Food Products Co., 5th Cir. 1959, 272 F. 2d 23; N.L.R.B. v. Cosco Products Co., supra. We have the firm conviction that there is not substantial evidence on the record as a whole that the discharge of Mrs. Yancey was wrongful.

We reach the same conclusion with respect to Grace McCart, Pearl Coker and Ruth Brooks as in the case of Mrs. Yancey. As to Mrs. McCart the evidence shows she attended a union meeting. There is no other evidence of union activity on her part. There was evidence of poor workmanship on her part. The conclusion is reached that because Morris Scharff was quoted as threatening to fire known union adherents, and because Scharff had asked her who attended the meeting, the discharge was the result of union activity. There was no firing of all union adherents, and the discussion between Mrs. McCart and Morris Scharff was initiated by her. She asserted that she was discharged because of union membership, a self-serving opinion which the Examiner and the Board accepted as fact. The Examiner stressed the fact that Mrs. McCart was rehired about a year later and then did satisfactory work, and from this fact draws the inference that she must have been doing satisfactory work before. While the doing of satisfactory work after the rehiring may justify an inference of an ability to do good work before being
1547 discharged, it does not demonstrate that she had done good work before being discharged.

Of the same pattern as Mrs. McCart were the discharges of Pearl Coker and Ruth Brooks. As with Mrs. Yancey, the Board's counsel says that the Board's finding of unlawful discharge of Pearl Coker is justified "in view of respondents' unconcealed animosity toward the union." That she was a sub-marginal producer is shown by her own testimony. Like Mrs. McCart, Pearl Coker was later rehired and from this the inference is again drawn that the work of the discharged employee must have been previously satisfactory. In the case of Ruth Brooks, from her own testimony, it appeared that

she was unable to make production and had told Morris Scharff that she was not satisfied with her operation. She quoted him as saying that he also was not satisfied. As in the case of Mrs. Yancey, we conclude that there is not substantial evidence on the record as a whole to sustain the findings that the discharges of Grace McCart, Pearl Coker and Ruth Brooks were wrongful.

On January 18, 1958, the union sent to the Respondents a letter listing twelve employees who were therein said to be members of the union and serving on the organizing committee, and that these employees had "been fully advised of their rights under the National Labor Relations Act," and that they were "protected in their rights to join and assist the union by Sec. 8, A(3) of the National Labor Relations Act as amended." On January 24, 1958, there was a lay-off of a number of the Respondents' employees. The
1548 lay-off resulted from a decline in business which necessitated a cutback in production. Included among those who were laid off were nine of those listed in the letter of the union to the Respondents. The Examiner and the Board found that the nine had been laid off because of their union activity. Those in charge of the Respondents' management testified as to the method used in the selection of those who were to be laid off. This testimony was plausible and, on the whole, consistent. It was largely uncontradicted. It would not have been found, we think, that the General Counsel had sustained the burden of proof as to discrimination but for the letter of the union and the fact that Morris Scharff had asked those who were named if the use of their names had been authorized.

It may be that in the absence of the letter from the union, the Respondents would have been guilty of interference if they had questioned employees regarding their union membership and activities, although this is not certain and is not before us for decision. Where, however, the union has notified the employer of the activity for the union of certain of the employees, no interference results from an inquiry as to the correctness of the union statement. Cf. N.L.R.B. v. Montgomery Ward & Co., 2nd Cir. 1951, 192 F. 2d 160; Sax v. N.L.R.B., 7th Cir. 1948, 171 F. 2d 769. It is well settled that an employee may not be discharged because of union activity. It is also true that union membership and union activity

do not insulate an employee from being discharged where an unlawful motive has not been shown. N.L.R.B. v. Ingram, supra; N.L.R.B. v. Hudson Pulp & Paper Corporation, supra; N.L.R.B. v. Raymond Pearson, Inc., 5th Cir. 1957, 243 F. 2d 456; N.L.R.B. v. Newton Company, supra; N.L.R.B. v. Huber & Huber Motor Express, 5th Cir. 1955, 223 F. 2d 748; N.L.R.B. v. Williamson-Dickie Mfg. Co., 5th Cir. 1942, 130 F. 2d 260; N.L.R.B. v. Tex-O-Kan Mills Co., supra.

Evidence is admissible in a proceeding to determine whether or not there has been anti-union discrimination in a lay-off of the percentage of union adherents involved. N.L.R.B. v. Newton Co., supra. N.L.R.B. v. Nabors, 5th Cir. 1952, 196 F. 2d 272, cert. den. 344 U.S. 865, 73 S. Ct. 106, 97 L. Ed. 671. There is no finding as to the percentage of union adherents retained or laid off. There is no finding as to the extent of the activity for union organization of union members laid off as compared with those retained. There is a finding that nine were laid off out of the twelve designated by the union in its caveat served upon the company. The fact that the Respondents disregarded the obvious effort of the union to prevent the discharge of those designated by it is of little weight in drawing an inference of a discriminatory discharge.

The selection of the employees to be laid off had been determined before the union's warning had been delivered, if the witnesses for the Respondents are to be believed. They were not believed by the Examiner or the Board. The Respondents' management assigned plausible and reasonable grounds for the selection of each of those who were laid off. The factual basis for the selections as given by the Respondents' witnesses were largely uncontradicted. The Examiner, however, and the Board, rejected the reasons asserted by the
1550 Respondents and found the motive for the selection of the nine committeemen was their union membership. In so doing, the Board placed its own evaluations upon the factual situations, assumed managerial prerogatives, and reached the conclusions that good business judgment would not have justified the Respondents in their selections for lay-offs and therefore, says the Board, the motive was the unlawful one.

In the frequently quoted opinion of N.L.R.B. v. Tex-O-Kan Flour Mills Co., supra, it was said:

"In each such case such membership may have been the cause [of discharge or lay-off], for the union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge, it is a fact to which he may swear. If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn testimony on the exact point." 122 F. 2d 433, 438–439. See N.L.R.B. v. Cosco Products Co., supra.

The Board has, in this case, been so obsessed with and fixed upon the anti-union attitude of the Repond-
1551 ents that it has rejected all other considerations for the questioned discharges and lay-offs. It is appropriate to say here, as was said in the McGahey case:

"But as we have so often said: management is for management. Neither Board nor Court can second-guess it or give it gentle guidance by over-the-shoulder supervision." *N.L.R.B. v. McGahey, supra.*

We reach the conclusion that the Board's General Counsel has failed to carry the burden of showing by substantial evidence on the record as a whole that the lay-offs were discriminatory, and therefore the portion of the Board's order directing reinstatement of the specified nine employees who were laid off will not be enforced.

The petition for enforcement will be granted in part, modified as herein provided, and denied in part.

ENFORCED IN PART; DENIED IN PART.

1552 In United States Court of Appeals
for the Fifth Circuit

No. 18198

NATIONAL LABOR RELATIONS BOARD

v.

WALTON MANUFACTURING COMPANY AND
LOGANVILLE PANTS COMPANY

JUDGMENT

January 6, 1961

This cause came on to be heard on the petition of the National Labor Relations Board for enforcement of an order of the National Labor Relations Board made on October 21, 1959, in the proceedings known upon the records of the Board as Case Nos. 10-CA-3127, 3201, 3219, 3202 and 3218, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the petition for enforcement in this cause be, and the same is hereby, granted in part and denied in part and modified in accordance with the opinion of this Court.

1553 In the United States Court of Appeals for the Fifth Circuit

No. 18198

[File endorsement omitted.]
[Title omitted.]

Motion for extension of time to file a petition for rehearing

Filed January 27, 1961

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The National Labor Relations Board, by its Assistant General Counsel, moves that the time for filing its petition for rehearing in the above cause be extended from January 27, 1961, up to and including February 13, 1961.

In support of its motion the Board respectfully shows as follows:

1. The many issues and unusually lengthy record in this case makes it impossible to prepare an adequate statement of the Board's position on petition for rehearing in the time provided for in the Court's rules.

2. An unusual press of Board litigation in this and other Courts of Appeals has consumed a significant portion of the time of the attorney to whom this case is assigned, adding to the difficulties of preparing the Board's petition prior to the present due date.

WHEREFORE, the Board respectfully moves that its motion be granted.

(S) MARCEL MALLET PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D.C., this 25th day of January, 1961.

1554 In the United States Court of Appeals for the Fifth Circuit

No. 18,198

[Title omitted.]

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, SITTING AT WASHINGTON, D.C.

Order extending time to file petition for rehearing

January 31, 1961

ORDER:

It is ordered that the time for filing a petition for rehearing in the above entitled and numbered cause be extended to and including February 13, 1961.

(s) WARREN L. JONES,
United States Circuit Judge.

JANUARY 31, 1961.

1555 In United States Court of Appeals

Law Offices

WILSON, BRANCH AND BARWICK

RHODES-HAVERTY BUILDING,
Atlanta 3, Georgia, January 27, 1961.

Letter of Counsel objecting to Board's proposed decree and enclosing proposed decree

Filed January 30, 1961

Re: Case Number 18198, N.L.R.B. v. Walton Manufacturing Company and Loganville Pants Company

Mr. EDWARD W. WADSWORTH,
Clerk, United States Court of Appeals, Fifth Circuit,
New Orleans 6, Louisiana.

[File endorsement omitted.]

DEAR MR. WADSWORTH: We are enclosing seven mimeographed copies of the proposed Decree in the above-entitled matter, as prepared by the Respondents. We will appreciate your bringing the enclosures to the attention of the Court.

We received the proposed Decree as prepared by the National Labor Relations Board. However, even though the Decree conforms in some respects to the decision of the Court, we do not believe that the Decree proposed by the Board is accurate in its entirety. Therefore, we, as attorneys for the Respondents, have prepared a proposed Decree which we feel conforms with the Court's decision.

In preparing the Respondents' proposed Decree we have omitted the following language from the Decree proposed by the Board. In paragraph number 1(a) of the proposed Decree we have omitted the following words: "engaging in surveillance of union meetings"; "shutdown of the plant", and "conditioning the reemployment of laid off employees upon a union not becoming the representative of the employees".

In the "Notice To All Employees", which is attached to the proposed Decree, we have omitted the words "shutdown of the plant" from the second paragraph of the Notice. We have also omitted paragraph number 5 from the Notice, which reads

as follows: "WE WILL NOT condition the reemployment of laid off employees upon a union not becoming the representative of our employees."

It is the Respondents' position that no finding or language made by the Court in its decision requires the inclusion of the words "engaging in surveillance of union meetings" in the proposed Decree. Likewise, the Court stated on page 4 of its decision that: "We find no basis for an inference of a threat to close the plant * * *" Upon the strength of this portion of the Court's decision, the Respondents contend that the words "shutdown of the plant" should be omitted from the Court's decree. We are also unable to find any supporting language, finding or conclusion of the Court which would warrant the inclusion of the following words in the Court's decree: "conditioning the reemployment of laid off employees upon a union not becoming the representative of the employees."

1556

We will appreciate your submitting this letter and its enclosures to the Court for its consideration.

With kindest regards, we are

Sincerely,

WILSON, BRANCH AND BARWICK,
By Robert T. Thompson,
ROBERT T. THOMPSON,

RTT/em.
Enclosures:
cc: Mr. Marcel Mallet Prevost, Mr. Walter C. Phillips.

1557 United States Court of Appeals for the Fifth Circuit

No. 18198

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY, RESPONDENTS

DECREE ENFORCING IN PART AND DENYING IN PART AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before JONES, Circuit Judge, and HOOPER and JOHNSON, District Judges

Respondent's proposed decree—not entered by the Court

This cause came on to be heard upon a petition of the National Labor Relations Board for the enforcement of an order issued by it on October 21, 1959, against the above-named Respondents, their officers, agents, successors and assigns. The Court heard argument of respective counsel on October 4, 1960, and has considered the briefs and transcript of record filed in this cause. On January 6, 1961, the Court being fully advised in the premises, handed down its decision enforcing in part and denying in part, the Board's said order. In conformity therewith,

It Is Hereby Ordered, Adjudged, and Decreed, that the Respondents, Walton Manufacturing Company and Loganville Pants Company, their officers, agents, successors, and assigns, shall jointly and severally:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of Amalgamated Clothing Workers of America, AFL–CIO, or in any other labor organization of its employees, by following or otherwise engaging in surveillance of union organizers; threatening employees with discharge, or with economic sanc-
1558 tions to discourage union affiliation or adherence; coercively or otherwise unlawfully interrogating any employees regarding their union membership or activities; or in any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organization, to join

or assist Amalgamated Clothing Works of America, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act, hereinafter called the Act.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post at their plant or plants in Loganville, Georgia, copies of the notice attached hereto and marked Appendix. Copies of said notice to be furnished by the Regional Director for the Tenth Region, Atlanta, Georgia, shall, after being duly signed by Respondents, be posted immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Respondents shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material;

(b) Notify the aforesaid Regional Director in writing within ten (10) days from the date of this Decree what steps the Respondents have taken to comply herewith.

Entered:

1559

APPENDIX

Notice to All Employees

pursuant to

A Decree of the United States Court of Appeals enforcing in part and denying in part an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in or activities on behalf of Amalgamated Clothing Workers of America, AFL–CIO, or any other labor organization.

We Will Not threaten our employees with discharge, or with any other economic sanction to discourage them from

joining or assisting labor organizations or engaging in other concerted activities for mutual aid or protection.

WE WILL NOT follow or otherwise engage in surveillance of union organizers or agents.

WE WILL NOT coercively or otherwise unlawfully interrogate our employees regarding their union membership or activities.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

All our employees are free to become or remain or to refrain from becoming or remaining members of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL–CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

WALTON MANUFACTURING COMPANY.
(Employer)

By .....
(Representative) (Title)

Dated.....

LOGANVILLE PANTS COMPANY,
(Employer)

By .....
(Representative) (Title)

Dated.....

This notice must remain posted for sixty (60) days from the date hereof and must not be altered, defaced, or covered by any other material.

1560 CERTIFICATE OF SERVICE

I, ROBERT T. THOMPSON, of Counsel for the Respondents in the within and foregoing matter, do hereby certify that a copy of the within and foregoing Decree and Notice To All Employees has been duly served upon the following persons by depositing in the United States Mail a copy of same, properly addressed, postage prepaid:

Mr. Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board
Washington 25, D.C.

Mr. Walter C. Phillips
Regional Director
Tenth Region
National Labor Relations Board
528 Peachtree—Seventh Building
Atlanta 23, Georgia

This the 27th day of January, 1961.

ROBERT T. THOMPSON.

1561 In United States Court of Appeals

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON 25, D.C., *February 3, 1961.*

Letter of Counsel for the Board in Reply to Counsel for Petitioner's Letter

Filed Rebruary 6, 1961

Re: No. 18198—N.L.R.B. v. Walton Mfg. Co., & Loganville Pants Co. (C.A. 5) Board Case No. 10-CA-3127

EDWARD W. WADSWORTH, Esquire,
Clerk, United States Court of Appeals for the Fifth Circuit,
New Orleans 6, Louisiana.

DEAR MR. WADSWORTH: This has reference to the letter addressed to you by respondents' attorney under date of January

27, 1961, in which he suggests certain changes in the proposed decree submitted by the Board in this matter. The decree which we submitted conforms to the language set forth in the Court's opinion (pp. 6–7, sl. op.) in which the Court ordered the deletion of specific italicized phrases. The decree proposed by respondents suggests the deletion of additional language beyond that set forth in the opinion. Accordingly, we do not agree that the opinion calls for the modifications of the Board's order proposed by respondents, and we do not consent to the proposed decree that they have submitted.

Very truly yours,

STUART ROTHMAN,
General Counsel.

By Marcel Mallet-Prevost,
MARCEL MALLET-PREVOST,
Assistant General Counsel.

cc: Wilson, Branch & Barwick, Attn.: Robert T. Thompson, Esquire, 615 Rhodes-Haverty Building, Atlanta 3, Georgia
NLRB Region 10

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

WASHINGTON 25, D.C., *February 7, 1961.*

Letter of Counsel for the Board That No Petition for Rehearing Will Be Filed

Filed February 8, 1961

Re: No. 18198—N.L.R.B. v. Walton Mfg. Co., and Loganville Pants Co. (C.A. 5) Board Case No. 10–CA–3127

EDWARD W. WADSWORTH, Esquire,
Clerk, United States Court of Appeals for the Fifth Circuit, New Orleans 6, Louisiana.

[File endorsement omitted.]

DEAR MR. WADSWORTH: Upon further consideration the Board has decided not to petition for rehearing in the above case.

Very truly yours,

STUART ROTHMAN,
General Counsel.
By MARCEL MALLET-PREVOST,
Assistant General Counsel.

cc: Wilson, Branch & Berwick, Att.: Robert T. Thompson, Esquire, 615 Rhodes-Haverty Building, Atlanta 3, Georgia.
NLRB Region 10.
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1563 In United States Court of Appeals
for the Fifth Circuit

No. 18198

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WALTON MANUFACTURING COMPANY AND LONGANVILLE PANTS COMPANY, RESPONDENTS

Decree enforcing in part and denying in part an order of the National Labor Relations Board

Filed February 16, 1961

Before JONES, Circuit Judge, and HOOPER and JOHNSON, District Judges

BY THE COURT:

This cause came on to be heard upon a petition of the National Labor Relations Board for the enforcement of an order issued by it on October 21, 1959 against the above-named respondents, their officers, agents, successors and assigns. The Court heard argument of respective counsel on October 4, 1960 and has considered the briefs and transcript of record filed in this cause. On January 6, 1961, the Court being fully advised in the premises, handed down its decision enforcing in part and denying in part, the Board's said order. In conformity therewith,

It Is Hereby Ordered, Adjudged, and Decreed, that the Respondents, Walton Manufacturing Company and Loganville Pants Company, their officers, agents, successors, and assigns, shall jointly and severally:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of Amalgamated Clothing Workers of America, AFL–CIO, or in any other labor organization of its employees, by following or otherwise engaging in surveillance of union organizers, engaging in surveillance of union meetings; threatening employees with discharge, shutdown of the plant or with other economic sanctions to discourage union affiliation or adherence; coercively or otherwise unlawfully interrogating employees regarding their union membership or activities; conditioning the reemployment of laid off employees upon a union not becoming

the representative of the employees; or in any other manner interfering with, restraining or coercing employees in
1564 the exercise of the right to self-organization, to join or assist Amalgamated Clothing Workers of America, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act, hereinafter called the Act.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post at their plant or plants in Loganville, Georgia, copies of the notice attached hereto and marked Appendix. Copies of said notice to be furnished by the Regional Director for the Tenth Region, Atlanta, Georgia, shall, after being duly signed by Respondents, be posted immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Respondents shall take reasonable steps to insure that such notices are not altered, defaced, or covered by an other material;

(b) Notify the aforesaid Regional Director in writing within ten (10) days from the date of this Decree what steps the Respondents have taken to comply herewith:

Entered:

1565 APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Decree of the United States Court of Appeals enforcing in part and denying in part an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in or activities on behalf of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL–CIO or any other labor organization.

WE WILL NOT threaten our employees with discharge, shutdown of the plant, or with any other economic sanction to discourage them from joining or assisting labor organizations or engaging in other concerted activities for mutual aid or protection.

WE WILL NOT follow or otherwise engage in surveillance of union organizers or agents.

WE WILL NOT coercively or otherwise unlawfully interrogate our employees regarding their union membership or activities.

WE WILL NOT condition the reemployment of laid off employees upon a union not becoming the representative of our employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

All our employees are free to become or remain or to refrain from becoming or remaining members of AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL–CIO, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

WALTON MANUFACTURING COMPANY
(Employer)

Dated ..... By .....
(Representative) (Title)

LOGANVILLE PANTS COMPANY,
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof and must not be altered, defaced, or covered by any other material.

1566 [Clerk's certificate to foregoing transcript omitted in printing.]

1567 Supreme Court of the United States

No. 77, October Term, 1961

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WALTON MANUFACTURING COMPANY, ET AL.

Order allowing certiorari.

October 9, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit entered on January 6, 1961, insofar as it denies enforcement of an order issued by the Board against Walton Manufacturing Company and Loganville Pants Company (R. 252–264).[1]

OPINIONS BELOW

The opinion of the court of appeals (*infra*, pp. 19–35) is reported at 286 F. 2d 16. The findings of fact, conclusions of law, and order of the Board (R. 57–161, 252–264) are reported at 124 NLRB 1331.

[1] "R." refers to the transcript of record; "B.A." refers to the appendix to the brief filed by the Board in the court of appeals.

JURISDICTION

The judgment of the court of appeals was entered on January 6, 1961 (*infra,* p. 36). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether the court below, by setting aside the Board's findings that employees had been discharged for union activity, "grossly misapplied" the standard of review laid down in *Universal Camera Corp* v. *National Labor Relations Board,* 340 U.S. 474, 488, by "displac[ing] the Board's choice between two fairly conflicting views."

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> * * * * *

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

SEC. 10.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objec-

tion that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

STATEMENT

A. THE BOARD'S FINDINGS, CONCLUSIONS AND ORDER

In November, 1957, the Amalgamated Clothing Workers of America, AFL–CIO, herein called the Union, initiated a campaign to organize the respondent's employees.[2] The respondent countered this campaign with threats to discharge union adherents, surveillance of a union organizer, interrogation of employees as to their own union activity and that of fellow employees, and promises of benefits designed to deter the employees from the exercise of their statutory rights (R. 65–68, 73–74, 76–77; B.A. 19–27, 37, 75, 86, 194–196, 207–210). The Trial Examiner, the Board, and the court below all agreed that the respondent by this anti-union campaign engaged in unlawful interference, restraint, and coercion of employees. In addition, the respondent discharged

[2] The respondents Walton Manufacturing Company and Loganville Pants Company, Georgia corporations, herein jointly called "the Company" or the respondent, are respectively the coat division and the pants division of a commonly-owned enterprise which manufactures men's and boy's clothing (R. 61–62; B.A. 189–190). For all purposes herein Walton and Loganville may be considered as a single entity.

a number of employees under the following circumstances.

On December 4, 1957, the respondent discharged employee Lucille Yancey. According to Mrs. Yancey's testimony, accepted by the Trial Examiner and the Board, within a day thereafter she had two conversations with Morris Scharff, the respondent's principal managerial officer, relating to her discharge (R. 84; B.A. 62–64). During both of these conversations she asked Scharff the reason she was discharged. The first time he told her it was for bad work, but when she asked him the second time, he replied by handing her a union paper (R. 84; B.A. 64). Her testimony continues, "So I told him, I said, 'Morris that's another reason you're laying me off.' And he said, 'Well, Lucille, I tell you, I've heard that you and your husband have been working with the union organizers'" (*ibid.*). Scharff added, according to Yancey, that if the Union did not succeed in organizing the plant, he would rehire her (R. 85; B.A. 65–66). Yancey's testimony was not contradicted by any credited evidence (R. 97).[3]

On January 10, 1958, the respondent discharged Grace McCart. On January 14, McCart went to Scharff to find out why she had been discharged and to seek reinstatement. During their conversation she told Scharff that she believed she had been discharged because of her union activities (R. 100; B.A. 85–86). Scharff did not deny her statement, but, instead,

[3] Scharff's denial that he made the statements attributed to him by Yancey was specifically discredited (R. 97).

interrogated her regarding the union meeting she had attended the night before her discharge and asked her to name those employees who had accompanied her to the meeting (R. 100; B.A. 85–86). McCart conceded her attendance at the meeting but refused to name any other employees who had attended (R. 100; B.A. 86). Scharff then asserted that it did not matter as he knew who was at the meeting and proceeded to name employees Pearl Coker and Ruth Brooks, whom he characterized as "heavily pro-union and active in the organizing attempt" (R. 100; B.A. 87). Scharff refused to reinstate McCart.

The day following Scharff's interrogation of McCart, the respondent discharged Pearl Coker (R. 103; B.A. 70). The next day, Ruth Brooks was dismissed (R. 108; B.A. 117). At the time of her discharge, Brooks told her supervisor, a Mr. Hughley, that she was being discharged because of her union activity (R. 109; B.A. 120). Hughley did not deny Brooks' accusation, but instead replied, "Well you girls are paying too much attention to this guy from the North [the Union organizer] giving you the piece rates on your job, and we cannot afford those rates that they pay up there" (R. 109; B.A. 121).

Following Brooks' discharge, in an apparent effort to protect the remaining pro-union employees, the Union wrote Scharff, listing 12 employees whom the letter identified as members of the union's volunteer organizing committee, and stating that they had been informed of their rights under the Act to engage in self-organization (R. 113; B.A. 205–206). Scharff

immediately interrogated every employee named in the letter who was present and working in the coat plant (R. 114; B.A. 32, 37–38, 75–76, 93, 99, 107–108, 122, 131). In each case he asked the employee if she had authorized the union to use her name (*ibid.*). When the employee answered in the affirmative, Scharff placed a check mark beside her name (*ibid.*). In some cases Scharff asked the employee if she would withdraw her name from the letter, and threatened reprisal for refusal. Employee Ida Harper testified that Scharff "* * * asked me if I wanted to stay on there and I told him, 'Yes.' He said, 'You know what this leads up to.' And put a check mark by my name and walked out." (R. 138; B.A. 99). Pauline McGee testified that after she acknowledged she had permitted the union to use her name on the letter Scharff said to her, "Do you know what this means?" "and I said 'Yes sir,' and he said 'Well, all right then'" (R. 144; B.A. 131). When Frances Powell admitted consenting to the Union's use of her name, Scharff said, "Well, if that's the way you want it" (R. 134; B.A. 32). Evelyn Hudson testified that when Scharff showed her the letter he stated, " 'Do you realize Evelyn, that this could work a hardship on you?' And I told him, 'Yes,' that I did. And he * * * 'Do you want to leave your name on this letter?' I told him, 'Yes.' And he * * * put a check mark by my name and walked away" (R. 126; B.A. 131). Scharff then posted the letter with the check marks on the Company bulletin board (R. 114; B.A. 130–132, 205). A few days later, Harper, McGee, Powell, Hudson and five other em-

ployees named in the letter were "permanently laid off" (R. 115).

Upon consideration of the foregoing facts the Board, in agreement with the Trial Examiner, concluded that the respondent had not only interfered with, restrained and coerced employees in their right to engage in concerted activity for the purpose of self-organization, but that the respondent had also discharged Yancey, McCart, Coker and Brooks, and laid off nine other employees to discourage membership in the Union (R. 252). Accordingly, the Board ordered the respondent to cease and desist from the unfair labor practices found; to reinstate and make whole those employees whom the respondent had discriminated against and to post appropriate notices (R. 261–264).

B. THE HOLDING OF THE COURT BELOW

The court below, while sustaining the Board's findings of interference, coercion and restraint, and enforcing the order of the Board in respect to those violations, determined that the Board's findings that the discharges and layoffs were motivated by discrimination against union activity lacked the requisite support in the record. The court, therefore, refused enforcement of the Board's order as it related to those violations (pp. 19–35, *infra*).

REASONS FOR GRANTING THE WRIT

In *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 488, this Court stated that a reviewing court may not "displace the Board's

choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo.*" The court below ignored that admonition here. In an isolated case this alone would not have prompted us to invoke the power of this Court.[4] However, the present decision is the most recent in a series of Fifth Circuit cases showing that it is the normal practice of that court to overturn Board findings of discrimination which would be sustained in the other circuits. Accordingly, this Court's corrective action is required in order to secure uniform administration of the national labor policy.

1. In determining whether a discharge is for union activities or for cause, the problem is to ascertain the employer's motive. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45–46; *Radio Officers* v. *National Labor Relations Board*, 347 U.S. 17, 43–44. Since direct evidence of a purpose to violate the Act is rarely obtainable, proof of motive usually entails the weighing of conflicting inferences. Thus, experience shows that employers hostile to unions are likely to take steps, including discharge, to prevent the union from gaining a foothold. On the other hand, it is also true that, when an employee is inefficient or insubordinate, he will often be discharged for that reason. Accordingly, when a record reveals

[4] It may be noted, however, that as recently as June, 1959, this Court, in a bargaining case which was before it on a procedural point, had occasion to remind the court below of the *Universal Camera* admonition. *National Labor Relations Board* v. *Fant Milling Co.*, 360 U.S. 301, 309, n. 10.

both the employer's hostility to unions and cause apart from the union for a discharge, it becomes necessary to decide which inference is the stronger in the light of all the facts—whether the anti-union animus or the employee's deficiency prompted the employer's action.

Congress entrusted to the Board the task of weighing the conflicting inferences. Congress also provided that the Board's resolution should be accepted by the reviewing court if the Board's choice is reasonable, even though the court would have "made a different choice had the matter been before it *de novo.*" *Universal Camera, supra.*

The Fifth Circuit, since the early days of the Wagner Act, has had difficulty in applying this principle. In *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U.S. 206, 207–209, this Court reversed the Fifth Circuit for setting aside Board findings of fact, pointing out that it had exceeded its reviewing power under the Act. Shortly thereafter, in *National Labor Relations Board* v. *Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 438, the Fifth Circuit nevertheless suggested that discriminatory discharge cases, which entail a back pay remedy, require a higher standard of proof than cases involving employer interference with union activity, where the only sanction is a cease and desist order. In an oft-repeated statement (see p. 34, *infra*), the court declared that, in such cases, if the employer "says it was not union membership or activity, but something else which in fact existed as a ground," there "must be impeachment of him, or substantial contradiction, or if cir-

cumstances raise doubts, they must be inconsistent with the positive sworn evidence on the exact point" (122 F. 2d at 439). In other words, the Fifth Circuit held that if it could be inferred that the employee was discharged for cause, the Board may not draw the inference that the discharge was for union activity, even though the latter inference was reasonable, and the Board had judged it stronger under the circumstances. The precedent cited for this proposition[5] showed that the court was denying the Board power to find adversely to the employer upon evidence supporting either of two inconsistent inferences.

In *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106, this Court, in reversing the Tenth Circuit, made plain that the view expressed in *Tex-O-Kan* was erroneous. "The possibility of drawing either of two inconsistent inferences from the evidence did not prevent the Board from drawing one of them * * *." Since then, all of the circuits but the Fifth have generally conformed to the *Nevada Consolidated* rule, which, as *Universal Camera* recognizes, was not changed by the 1947 amendments. See *National Labor Relations Board* v. *Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2); *National Labor Relations Board* v. *Minnesota Mining & Mfg. Co.*, 179 F. 2d 323, 326 (C.A. 8); *Sunshine Biscuits, Inc.* v. *National Labor Relations Board*, 274 F. 2d 738, 741–742 (C.A. 7).

Nevertheless the Fifth Circuit adhered to its former practice. Through 1955, the court was still

[5] *Pennsylvania Railroad Co.* v. *Chamberlain*, 288 U.S. 333.

expressing the view that, if it found the inference of a discharge for cause as reasonable as the contrary inference, the Board's finding of discriminatory motive should be set aside. See *National Labor Relations Board* v. *Houston Chronicle Publishing Co.*, 211 F. 2d 848, 853–854; *National Labor Relations Board* v. *Huber & Huber Motor Express, Inc.*, 223 F. 2d 748, 749; *National Labor Relations Board* v. *Rutter-Rex Mfg. Co.*, 229 F. 2d 816, 819. Although the court subsequently corrected its formulation of the governing principle (see *National Labor Relations Board* v. *Coats & Clark, Inc.*, 231 F. 2d 567, 572), it has continued to apply the old rule in practice. Examination of its decisions in discriminatory discharge cases reveals that the Fifth Circuit's practice is to overturn the Board's findings of unlawful motivation if the employer can point to some incident or shortcoming on the part of the employee which *might* have been the cause for the discharge.[6] And the Fifth Circuit appears to follow this course without regard to the strength of the inference of anti-union discrimination to be derived from admissions, the employer's knowledge of the employee's union activities and the proof of other unfair labor practices.

2. The present case illustrates both the character of the inquiry which the Board must make under Sec-

[6] This may be illustrated by the following cases during the last two years: *National Labor Relations Board* v. *Hudson Pulp & Paper Corp.*, 273 F. 2d 660 (C.A. 5); *National Labor Relations Board* v. *Ingram*, 273 F. 2d 670 (C.A. 5); *National Labor Relations Board* v. *Allure Shoe Corp.*, 277 F. 2d 231 (C.A. 5); *National Labor Relations Board* v. *Cosco Products Co.*, 280 F. 2d 905 (C.A. 5); *National Labor Relations Board* v. *Reducing Carriers, Inc.*, 284 F. 2d 397 (C.A. 5).

tion 8(a)(3) and the essential error of the court below. Lucille Yancey, who was discharged by respondent, testified that Scharff, one of the respondent's officials, had admitted that the assistance which she gave to union organizers was the cause of her discharge and that her reinstatement depended upon the failure of the effort to organize (R. 97–98). There was a mass of evidence that the respondent not only was hostile to the union but that it had not hesitated to give effect to its hostility by engaging in extensive anti-union conduct in violation of Section 8(a)(1). Other employees active in support of the union were proved to have been discharged or laid off. Certainly these facts support an inference that Mrs. Yancey was discharged because of her union activities. There was also testimony to the effect that Mrs. Yancey's work was poor. No doubt this information would support an inference that Mrs. Yancey's unsatisfactory work was the cause for her discharge, although it also appeared that she had never been criticized before and that her production was not unsatisfactory (R. 83–84, 92; B.A. 59–60, 211).[7] The Board, after weighing all the evidence, found that the former inference was the stronger. Since both views were reasonable in the light of all the evidence, the choice was for the Board,

[7] The court relied on evidence showing that Mrs. Yancey was not, in fact, an active union adherent (*infra*, p. 28). This fact, if true, would be irrelevant in the light of the evidence that the respondent believed she was "working with the union organizers" (*supra*, p. 5). See *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 589–590; *National Labor Relations Board* v. *Ridge Tool Co.*, 211 F. 2d 88 (C.A. 6), enforcing 102 NLRB 512, 513.

and a proper application of the standard of judicial review established by the *Universal Camera* case would have led to affirmance of its finding and enforcement of its order. Nevertheless, the court below held that the proof of poor performance was decisive and reversed the Board.

The action of the court in setting aside the Board's findings of unlawful discrimination in the other discharges followed the same pattern. In each case the court chose to rely on selected evidence that the individual was responsible for "poor workmanship," was a "sub-marginal producer," or was "unable to make production." Although such evidence might have justified a decision by the Board that unlawful discrimination was not involved, the Board had rendered its decision on the basis of evidence which it believed more convincing, as follows:

(a) Evidence that Grace McCart was discharged the day after she signed a union card; that, when she accused Scharff of discharging her for that reason, he did not deny it but proceeded to interrogate her concerning her union activities and those of other employees (R. 99–100); and that she had never been criticized about her work, had successfully met the production quota prior to her discharge, and was indeed rehired to perform the same work after the Company had defeated the Union (R. 99-102; B.A. 84).

(b) Evidence with respect to the discharge of Pearl Coker that Scharff admitted that, in his interrogation of Mrs. McCart, he had named Mrs. Coker as one of those employees he knew to be "heavily pro-union and active in the organizing attempt"; that Mrs.

Coker was discharged the next day with the explanation that, though her work was "nice," she was not earning enough (R. 103, 107); and that an employee whose production was lower than Mrs. Coker's was retained while she was precipitously fired in the middle of the work week without advance warning (R. 104–105; B.A. 42).

(c) With respect to Ruth Brooks, evidence that she, like Mrs. Coker, was described by Scharff as "heavily pro-union and active in the organizing attempt" (R. 109, 112); that, when she told her supervisor that she was being discharged because of union activities, he did not deny it, but replied that the "girls were paying too much attention" to the promises of the union organizer (R. 109); and that she had been regarded as a good operator and her production was equal to that of others in her section (R. 109, 111).

The finding of discrimination with respect to nine of the employees named in the union letter who were "permanently laid off" rested on the circumstances that the layoffs occurred after the respondent verified that they were on the union committee, attempted unsuccessfully to persuade them to withdraw, and delivered thinly veiled warnings of the consequences if they did not (*supra*, pp. 6–7). The court, however, chose to rely on the "plausible and reasonable grounds" assigned by the management even though the Board found that this evidence did not stand up under scrutiny (R. 117–119, 121–122, 125–127, 128–129, 131–132, 134–137, 138–139, 144–147, 149–150).

On the basis of the foregoing, the Board's inference that four employees were discharged and nine

laid off because of their union activity, rather than for cause as asserted by the respondent, was clearly reasonable. Under *Universal Camera*, the court below was therefore required to sustain the Board's findings, and its action in redetermining the matter *de novo* involved a gross misapplication of the standard of review expressed therein.

3. As stated above, the instant case is fairly representative of the basic error in the rules of decision developed by the court below for applying the standard of judicial review established in the *Universal Camera* case. The basic error is that that court does not simply inquire whether the Board's findings are supported by substantial evidence on the record considered as a whole; instead, it has set up a special subordinate rule calling for a more critical evaluation of the findings in discriminatory discharge cases—a rule which denies the Board power to choose between two fairly conflicting views. This is made clear by the concluding portions of the opinion in the instant case where the court below quotes at length from the *Tex-O-Kan* case, *supra*, to show that a special burden rests upon the Board whenever the employer assigns a specific reason for a discharge (p. 34, *infra*).[8]

The extent of the disparity between the Fifth Circuit and other courts of appeals in applying the substantial evidence reviewing standard is further revealed by these statistics: A survey published in the American Bar Association Journal, in 1958, shows

[8] See also, *National Labor Relations Board* v. *Ingram*, 273 F. 2d 670, 673 (C.A. 5).

that the Fifth Circuit sustained administrative findings in only 45 percent of the cases before it, while the other ten circuits did so in 72 percent of the cases before them." Similarly, Board statistics prepared for the fiscal year 1960 show that the courts other than the Fifth Circuit denied enforcement or substantially modified the Board's order in 42 cases, and of these only 11, or 26.2 percent, were refused enforcement on an issue of fact. In the Fifth Circuit, on the other hand, the court denied enforcement or substantially modified the Board's order in 12 cases, and of these 10, or 83.3 percent, were refused enforcement solely on an issue of fact.

This wide discrepancy between the Fifth Circuit and the other courts of appeals respecting the scope of review of Board findings must be removed by this Court if the statutory guarantees are to have the same meaning for employees in all parts of the nation.[10] In short, we submit that, as in *National*

[9] Cooper, *Administrative Law: The "Substantial Evidence" Rule*, 44 A.B.A.J. 945, 948 (1958). See also, Jaffe, *Judicial Review: Question of Fact*, 69 Harv. L. Rev. 1020, 1029 (1956).

[10] The discrepancy in standard of review is not confined to discriminatory discharge cases. Contrast, for example, the standard applied by the court below and by other circuits in reviewing Board findings that bargaining was not in good faith. With *White* v. *National Labor Relations Board*, 255 F. 2d 564 (C.A. 5) (and see dissent at 570-573), and *National Labor Relations Board* v. *Cummer-Graham Co.*, 279 F. 2d 757 (C.A. 5), contrast *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 134 (C.A. 1), certiorari denied, 346 U.S. 887; *National Labor Relations Board* v. *Century Cement Co.*, 208 F. 2d 84, 85-86 (C.A. 2); *Wheatland Elec. Coop.* v. *National Labor Relations Board*, 208 F. 2d 878, 882 (C.A. 10), certiorari denied, 347 U.S. 966.

Labor Relations Board v. *Waterman Steamship Corp.*, 309 U.S. 206, 208–209, "the present [is] one of a series of decisions" in which the court below has failed to give effect to the provisions of Section 10(e) of the Act, and that the Board's "duly conferred jurisdiction has been invaded so that [its] statutory duties cannot be effectively fulfilled * * *" Review by this Court is thus warranted.[11]

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
FREDERICK U. REEL,
RUSSELL SPECTER,
Attorneys,
National Labor Relations Board.

APRIL 1961.

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[11] The Fifth Circuit's intrusion into the Board's fact-finding function is further revealed by the recent decision in *National Labor Relations Board* v. *Florida Citrus Canners Co-Operative* (C.A. 5), March 27, 1961, where the court undertook to reweigh and set aside the Board's determination of the credibility of witnesses even though reasonable.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18198

NATIONAL LABOR RELATIONS BOARD, PETITIONER, *versus* WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY, RESPONDENTS

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, SITTING AT WASHINGTON, D.C.

(January 6, 1961.)

Before JONES, *Circuit Judge*, and HOOPER and JOHNSON, *District Judges*.

JONES, Circuit Judge: The National Labor Relations Board, by this proceeding, seeks enforcement of its order against the Respondents, Walton Manufacturing Company and Loganville Pants Company. The Board found that the Respondents interfered with, restrained and coerced their employees by surveillance of union activities, threatening reprisals for union adherence and interrogating employees concerning union affairs. The Board's order directs that the Respondents cease and desist from engaging in these practices. The Board found that the Respondents had discharged four employees and terminated the employment of nine others because of their union activities. The Board's order directs that employment be offered to such of these discharged and termi-

nated employees as had not been rehired and that all of them be made whole for any loss of earnings sustained by reason of their having been discharged or having had their employment terminated. The conventional provisions for making Respondents' records available to the Board, and for the posting of notices were included in the order. The Board states that the only question for our consideration is whether there is substantial evidence on the record as a whole to support the Board's findings. This is certainly important and may be controlling.

As we must do in these "substantial evidence" cases, we have undertaken the tedious task of reading the record and reviewing the evidence; tedious because of the necessity of going from the Board's appendix to the employer's appendix, and so back and forth from one to the other, in an effort to piece together the isolated excerpts of testimony which each party has extracted for the purpose of supporting the position for which it contends. The Board incorporates into its appendix nineteen separate quotations from the testimony of the witness, Morris Scharff, and the employer includes thirty-seven selections from the testimony of this witness. The same is also true, to a lesser degree, with respect to the testimony of twenty-five or more of the other witnesses. Our decision is to be based upon the record considered as a whole. Parts of the record, taken out of context, are not to be considered piecemeal, but we are to consider the record in its entirety and as a unit. This we have attempted to do.

The Board found that the Respondents interfered with, restrained and coerced their employees in violation of Section 8(a)(1) of the Act.[2] The personnel

[2] 29 U.S.C.A. § 158(a)(1).

matters of the Respondents were entrusted to Morris Scharff. That he was possessed of an anti-union bias is well established, and the Respondents are not to be penalized because of his beliefs. *N.L.R.B.* v. *McGahey*, 5th Cir. 1956, 233 F. 2d 406. Nor will the absence of affection of the union management for Scharff, which was also demonstrated, result in any benefit to the Respondents. Morris Scharff made talks to the employees during the period when the union was attempting to organize the Respondents' plants. He related some of his unpleasant experiences with the union during the time he was operating a plant in New York. In the brief of the Board it is stated that "Scharff told the employees, in effect, that he would shut down the plant rather than deal with the union." Although some of the witnesses for the Board's General Counsel testified that Scharff had made such statements, the Examiner became satisfied that the tape recordings, providentially made, and written transcriptions of them, were "substantially accurate reproductions of what was said. * * * " The examiner concluded that the statements of Morris Scharff were, to use the phrase in the Examiner's report, "protected free speech," with the exception of the conclusion of the speech[3] in which Scharff said:

> * * * remember I have no association with this Company, officially. I hope to have in the near future, but if you want a union shop, you are going to have it without me, because I have had my stomach full of unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it.

[3] Morris Scharff made several speeches, all from the same notes and all of substantially the same content.

Upon the above quoted statement the Examiner finds that Scharff had threatened to close the plant rather than deal with the union. Although the father and brother of Morris Scharff were officers, directors and stockholders of the Respondents, Morris Scharff himself was neither officer, director nor stockholder. We find no basis for an inference of a threat to close the plant in the statement of Scharff that if the employees have a union shop they will have it without him, and that he will have no part of it. Notwithstanding the extent to which Morris Scharff may have exercised the functions of management, or have been regarded by the employees as the boss, that which he said cannot fairly be interpreted to mean something so different as the meaning which the Examiner has found. Some of the employees gave categorical testimony that Scharff's speeches did contain direct statements that he would close the plant rather than deal with the union. The Examiner concludes that this testimony was the interpretation of Scharff's quoted remarks, and the Examiner says that the employees did reasonably interpret the remarks as a threat to close the plant. If it be suggested that, instead of making reasonable interpretations, these employees merely demonstrated that they had faulty memories, and their statements as to other matters were to be regarded with suspicion, the answer to such a suggestion would be that credibility is a matter entrusted to the Examiner and the Board and they have fully credited the testimony of the employees and have found Morris Scharff unworthy of belief.

Although there was not any evidence, substantial or otherwise, to support the finding that Morris Scharff, in his talks to employee groups, threatened to close the plants, we cannot say the same with respect to other findings of interference, restraint and

coercion. A letter was sent to employees outlining the Respondents' policy as to life insurance, hospital and medical insurance, paid vacations and overtime. Hope of inaugurating a pension plan was declared. The letter stated:

> We are happy that no employee has to pay dues or initiation fees to any outside union to work at these plants. You will not be forced to make payments to outsiders for the privilege of working here. What earnings you make here are yours. No part goes to organizers.

A union organizer was followed as he called upon Respondents' employees at their homes. Direct as well as veiled threats of discharge for joining the union were made by a supervisor to employees. There was interrogation by supervisors of employees as to their activity and that of others with respect to the union. The testimony as to some of these matters was controverted. The resolving of evidentiary conflicts is within the province of the Board. Some of the conduct of the Respondents which the Board has condemned might, if isolated from the other facts shown, be regarded as not being in violation of the prohibitions against interference, restraint and coercion. We cannot say that the totality of the evidence, the substantial evidence on the record as a whole, fails to support the Board's finding of interference, restraint and coercion. The "cease and desist" portion of the Board's order, modified as hereinafter provided, will be enforced.

Among other things, the Board's order provides that the Respondents shall cease and desist from:

> Discouraging membership in and activities on behalf of Amalgamated Clothing Workers of America, AFL–CIO, or in any other labor organization of its employees, by *discharging*

> *or refusing to reinstate any of its employees, or in any other manner* discriminating in regard to their hire or tenure of employment, or any other term or condition of employment. [Italics supplied.]

Since, as is hereinafter set out, it is determined that substantial evidence is lacking for the Board's findings that the Respondents discriminatorily discharged and refused to rehire employees because of their union activity, we reach the conclusion that the italicized portion of the order, as quoted above, should be omitted.

The Board's order also directed the Respondents to cease and desist from:

> Following or otherwise engaging in surveillance of union organizers, or *creating the impression of* engaging in surveillance of union meetings; threatening employees with discharge, shutdown of the plant or with other economic sanctions to discourage union affiliation or adherence; coercively or otherwise unlawfully interrogating employees regarding their union membership or activities; conditioning the reemployment of laid off employees upon a union not becoming the representative of the employees; or in any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organizations, to join or assist Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor

> organization as a condition of employment as authorized in Section 8(a)(3) of the Act. [Italics supplied.]

If the Respondents are required to refrain from engaging in surveillance of union meetings the purpose of the Act will be served without imposing upon them a duty to avoid creating an impression. "Impression" is an equivocal term, it is "an indistinct or indefinite notion, remembrance, belief or opinion." *Paramount Film Distributing Corporation* v. *City of Chicago*, D.C.N.D.Ill 1959, 172 F. Supp. 69. Unlawful interference may be found from inferences based on facts disclosed by evidence, but not upon impressions made upon the employees, unless made by acts or words of the employer, and then it is the acts or words that are violative of the law. The italicized words in that portion of the order last quoted above should be deleted.

During the period between December 4, 1957, and January 16, 1958, the Respondents discharged four employees, Lucille Yancey, Grace McCart, Pearl Coker, and Ruth Brooks. The Board found that they were discharged for union activity, in violation of Section 8(a)(3) and (1) of the Act. Reinstatement of those who had not been rehired, and payment of lost earnings were ordered. We are again confronted with the difficult task of determining whether the motive for the discharge of employees is a proper one or whether it was prompted by the activity of the employees on behalf of a union. Cf. *N.L.R.B.* v. *Redwing Carriers, Inc.*, 5th Cir. 1960, -- F. 2d —. The requirements of substantiality of evidence and reasonableness of the inferences to be drawn from the evidence are not less in a case of reinstatement and reimbursement than where a cease and desist order is directed against interference. See *N.L.R.B.*

v. *Ingram*, 5th Cir. 1960, — F. 2d —; *N.L.R.B.* v. *Tex-O-Kan Flour Mills Co.*, 5th Cir. 1941, 122 F. 2d 433. In the determination of whether there is substantial evidence and whether inferences are justified, a closer scrutiny of the record than might otherwise be required becomes necessary where, as here, questionable inferences have been drawn and where, as here, the Examiner has uniformly credited all of the General Counsel's evidence and generally disbelieved all of the employer's evidence. *N.L.R.B.* v. *Miami Coca-Cola Bottling Co.*, 5th Cir. 1955, 222 F. 2d 341, Cf. *N.L.R.B.* v. *Cosco Products Co.*, 5th Cir. 1960, 280 F. 2d 905.

We are aware of the requirement that we are not to overturn the Board's findings if supported by substantial evidence on the record as a whole. We recognize the principle that the substantial evidence rule applies to the choice of inferences as well as to the finding of facts as facts. *N.L.R.B.* v. *Birmingham Publishing Co.*, 5th Cir. 1958, 262 F. 2d 2. We do not question the settled doctrine that the Court should not, as a general proposition, disturb the action of the Examiner and the Board in crediting or discrediting the testimony of a witness. *N.L.R.B.* v. *West Point Manufacturing Co.*, 5th Cir. 1957, 245 F. 2d 783; *N.L.R.B.* v. *Newton Co.*, 5th Cir. 1956, 236 F. 2d 438. It is not, however, required that the Examiner's findings be given more weight than reason would dictate and, in the light of judicial experience, they deserve. *Universal Camera Corporation* v. *N.L.R.B.*, 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456. This Court has had frequent occasion to announce and develop the doctrine that if it appears that there is substantial evidence on the record as a whole to make the inferences of legal and illegal discharge reasonably equal, we may not overturn the Board's finding

of an illegal discharge. *N.L.R.B.* v. *Dan River Mills, Inc.*, 5th Cir. 1960, 274 F. 2d 381, *N.L.R.B.* v. *Fox Manufacturing Co.*, 5th Cir. 1956, 238 F. 2d 211; *N.L.R.B.* v. *Newton Co.*, 5th Cir. 1956, 236 F. 2d 438; *N.L.R.B.* v. *McGahey*, 5th Cir. 1956, 233 F. 2d 406; *N.L.R.B.* v. *Coats & Clark, Inc.*, 5th Cir. 1956, 231 F. 2d 567; *N.L.R.B.* v. *Houston Chronicle Publishing Co.*, 5th Cir. 1954, 211 F. 2d 848. The clarification of this rule, as stated in the Houston Chronicle case, by the opinion in Coats & Clark, has not modified the principle that an unlawful motive is not lightly to be inferred. *N.L.R.B.* v. *Dan River Mills, Inc., supra; N.L.R.B.* v. *Hudson Pulp & Paper Corporation*, 5th Cir. 1960, 273 F. 2d 660; *N.L.R.B.* v. *Fox Manufacturing Co., supra.*

The burden of proof rests upon the Board's General Counsel to establish by acceptable substantial evidence on the record as a whole that discharges came from the forbidden motive of interference in the exercise of the statutory rights of the employees. *N.L.R.B.* v. *Winter Garden Citrus Products Cooperative*, 5th Cir. 1958, 260 F. 2d 913, and cases there cited. See also *N.L.R.B.* v. *Birmingham Publishing Co., supra*, and cases there cited, and *N.L.R.B.* v. *Redwing Carriers, Inc., supra.* Whenever the General Counsel's burden is not carried, and whenever the inferences of fact are not reasonably permitted by the substantial evidence, it is the duty of the reviewing court to displace the Board's finding of unlawful motive.

There was much evidence for the Respondents that the work of the discharged employees was unsatisfactory and that this was the sole reason for the discharges. Much of this testimony, of course, was from management, but like testimony was given by other employees and, it may be said, by the testimony in some

instances of the discharged employees with respect to their own work. The first of the four employees to be discharged was Lucille Yancey whose employment was terminated on December 4, 1957. We are informed by the Board's brief that she "joined the union about ten days before her discharge and immediately became very active in its affairs." Her activity consisted of her receiving several visits from union organizers and promising to give the union a list of employees' names. It is not shown that this promise was kept. She did no soliciting of members for the union. She testified, and reiterated her testimony, that no union meetings were held until after her discharge. Since a union meeting was, in fact, held on the day before she was discharged, her testimony indicates both a lack of knowledge of the activities of the union and a lack of interest in such activities. She attended two meetings after she was discharged. The Board, in its brief, tells us that Mrs. Yancey told Morris Scharff, on the day of her discharge or the following day, that she would "abandon her union activities if she could return to her job." What she said she told Scharff was that if he would give her back her job, "I won't vote for the union." At this interview Mrs. Yancey told Scharff that she had not been helping organize the plant. None of her superiors ever discussed the union with her while she was an employee. She quoted Scharff as telling her that he did not know whether she had signed a union card. It seems apparent that in the preparation of the Board's brief ardor has outrun accuracy.

Mrs. Yancey testified as to her skill as an operator and of the compliments she had received for her excellent work. The superintendent, I. S. Prosperman, the supervisor, Grace Higgins, and several of Respondents' employees testified otherwise. Of this

testimony, the Examiner and the Board discredited, for the most part, that which was favorable to the Respondents and credited that which was unfavorable to them. It was pretty clear, though, that Mrs. Yancey had considerable trouble in sewing in the linings of coats. The Examiner was persuaded that this was not due to any lack of ability on the part of Mrs. Yancey, but rather to the skimpy cut of the linings. Mrs. Yancey admitted making the request for the linings to be cut longer, but only for the purpose of making it easier on her. Proper and satisfactory garments, she said, were being made with the linings as furnished. There was evidence, credible and credited, that Mrs. Yancey's work was not in all respects satisfactory. Applicable here are the following principles:

> The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. *N.L.R.B.* v. *Jones & Laughlin Steel Corporation,* 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A.L.R. 1352. See *N.L.R.B.* v. *McGahey, supra.*

The Examiner has found that the Respondents knew or believed that Mrs. Yancey was a strong union adherent. The Board, in its brief, urges that "In view of respondents' demonstrated hostility to the union, and its surveillance of union activities, there was ample basis for the Board to find * * * that Yancey was known or believed by respondents to be an active union adherent, and that this was the rea-

son for her discharge." The difficulty with the Board's position is that the evidence which the Examiner has credited, as well as that which he has discredited, shows that Mrs. Yancey was not at all active in her union adherence and no evidence, whether or not credited, tends to show otherwise. The visits of union organizers to Mrs. Yancey's home do not support a finding of union activity on her part. Nor does the anti-union feeling of the Respondents so change the character of the evidence as to require or permit the inference of wrongful discharge which the Examiner and the Board draw. The opposition of an employer to union organization, and restraint, coercion and interference are not enough to make the discharge of an employee a wrongful one. *N.L.R.B.* v. *Hudson Pulp & Paper Corporation, supra; N.L.R.B.* v. *McGahey, supra.* Anti-union bias, while a factor in evaluating testimony, does not supply the element of purpose. That element must be established with respect to each discharge. *N.L.R.B.* v. *Dan River Mills, Inc., supra.* The finding that Mrs. Yancey was discharged because of union activity was, it appears, based upon suspicion and conjecture. Such a finding, so based, cannot be sustained. *N.L.R.B.* v. *Drennon Food Products Co.,* 5th Cir. 1959, 272 2d 23; *N.L.R.B.* v. *Cosco Products Co., supra.* We have the firm conviction that there is not substantial evidence on the record as a whole that the discharge of Mrs. Yancey was wrongful.

We reach the same conclusion with respect to Grace McCart, Pearl Coker and Ruth Brooks as in the case of Mrs. Yancey. As to Mrs. McCart the evidence shows she attended a union meeting. There is no other evidence of union activity on her part. There was evidence of poor workmanship on her part. The conclusion is reached that because Morris Scharff was quoted as threatening to fire known union adherents,

and because Scharff had asked her who attended the meeting, the discharge was the result of union activity. There was no firing of all union adherents, and the discussion between Mrs. McCart and Morris Scharff was initiated by her. She asserted that she was discharged because of union membership, a self-serving opinion which the Examiner and the Board accepted as fact. The Examiner stressed the fact that Mrs. McCart was rehired about a year later and then did satisfactory work, and from this fact draws the inference that she must have been doing satisfactory work before. While the doing of satisfactory work after the rehiring may justify an inference of an ability to do good work before being discharged, it does not demonstrate that she had done good work before being discharged.

Of the same pattern as Mrs. McCart were the discharges of Pearl Coker and Ruth Brooks. As with Mrs. Yancey, the Board's counsel says that the Board's finding of unlawful discharge of Pearl Coker is justified "in view of respondent's unconcealed animosity toward the union." That she was a submarginal producer is shown by her own testimony. Like Mrs. McCart, Pearl Coker was later rehired and from this the inference is again drawn that the work of the discharged employee must have been previously satisfactory. In the case of Ruth Brooks, from her own testimony, it appeared that she was unable to make production and had told Morris Scharff that she was not satisfied with her operation. She quoted him as saying that he also was not satisfied. As in the case of Mrs. Yancey, we conclude that there is not substantial evidence on the record as a whole to sustain the findings that the discharges of Grace McCart, Pearl Coker and Ruth Brooks were wrongful.

On January 18, 1958, the union sent to the Respondents a letter listing twelve employees who were therein

said to be members of the union and serving on the organizing committee, and that these employees had "been fully advised of their rights under the National Labor Relations Act," and that they were "protected in their rights to join and assist the union by Sec. 8, A (3) of the National Labor Relations Act as amended." On January 24, 1958, there was a lay-off of a number of the Respondents' employees. The lay-off resulted from a decline in business which necessitated a cutback in production. Included among those who were laid off were nine of those listed in the letter of the union to the Respondents. The Examiner and the Board found that the nine had been laid off because of their union activity. Those in charge of the Respondents' management testified as to the method used in the selection of those who were to be laid off. This testimony was plausible and, on the whole, consistent. It was largely uncontradicted. It would not have been found, we think, that the General Counsel had sustained the burden of proof as to discrimination but for the letter of the union and the fact that Morris Scharff had asked those who were named if the use of their names had been authorized.

It may be that in the absence of the letter from the union, the Respondents would have been guilty of interference if they had questioned employees regarding their union membership and activities, although this is not certain and is not before us for decision. Where, however, the union has notified the employer of the activity for the union of certain of the employees, no interference results from an inquiry as to the correctness of the union statement. Cf. *N.L.R.B.* v. *Montgomery Ward & Co.*, 2nd Cir. 1951, 192 F 2d 160; *Sax* v. *N.L.R.B.*, 7th Cir. 1948, 171 F. 2d 769. It is well settled that an employee may not be dis-

charged because of union activity. It is also true that union membership and union activity do not insulate an employee from being discharged where an unlawful motive has not been shown. *N.L.R.B.* v. *Ingram, supra; N.L.R.B.* v. *Hudson Pulp & Paper Corporation, supra; N.L.R.B.* v. *Raymond Pearson, Inc.,* 5th Cir. 1957, 243 F. 2d 456; *N.L.R.B.* v. *Newton Company, supra; N.L.R.B.* v. *Huber & Huber Motor Express,* 5th Cir. 1955, 223 F. 2d 748; *N.L.R.B.* v. *Williamson-Dickie Mfg. Co.,* 5th Cir. 1942, 130 F. 2d 260; *N.L.R.B.* v. *Tex-O-Kan Mills Co., supra.*

Evidence is admissible in a proceeding to determine whether or not there has been anti-union discrimination in a lay-off of the percentage of union adherents involved. *N.L.R.B.* v. *Newton Co., supra, N.L.R.B.* v. *Nabors,* 5th Cir. 1952, 196 F. 2d 272, cert. den. 344 U.S. 865, 73 S. Ct. 106, 97 L. Ed. 671. There is no finding as to the percentage of union adherents retained or laid off. There is no finding as to the extent of the activity for union organization of union members laid off as compared with those retained. There is a finding that nine were laid off out of the twelve designated by the union in its caveat served upon the company. The fact that the Respondents disregarded the obvious effort of the union to prevent the discharge of those designated by it is of little weight in drawing an inference of a discriminatory discharge.

The selection of the employees to be laid off had been determined before the union's warning had been delivered, if the witnesses for the Respondents are to be believed. They were not believed by the Examiner or the Board. The Respondents' management assigned plausible and reasonable grounds for the selection of each of those who were laid off. The factual basis for the selections as given by the Respondents'

witnesses were largely uncontradicted. The Examiner, however, and the Board, rejected the reasons asserted by the Respondents and found the motive for the selection of the nine committeemen was their union membership. In so doing, the Board placed its own evaluations upon the factual situations, assumed managerial prerogatives, and reached the conclusions that good business judgment would not have justified the Respondents in their selections for lay-offs and therefore, says the Board, the motive was the unlawful one.

In the frequently quoted opinion of *N.L.R.B.* v. *Tex-O-Kan Flour Mills Co., supra,* it was said:

> In each such case such membership may have been the cause [of discharge or lay-off], for the union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge, it is a fact to which he may swear. If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn testimony on the exact point. 122 F. 2d 433, 438–439. See *N.L.R.B.* v. *Cosco Products Co., supra.*

The Board has, in this case, been so obsessed with and fixed upon the anti-union attitude of the Respondents that it has rejected all other considerations for the questioned discharges and lay-offs. It is appropriate to say here, as was said in the McGahey case:

> But as we have so often said: management is for management. Neither Board nor Court can second-guess it or give it gentle guidance by over-the-shoulder supervision. *N.L.R.B.* v. *McGahey, supra.*

We reached the conclusion that the Board's General Counsel has failed to carry the burden of showing by substantial evidence on the record as a whole that the lay-offs were discriminatory, and therefore the portion of the Board's order directing reinstatement of the specified nine employees who were laid off will not be enforced.

The petition for enforcement will be granted in part, modified as herein provided, and denied in part.

Enforced in part; denied in part.

JUDGMENT

Extract from the Minutes of January 6, 1961

NATIONAL LABOR RELATIONS BOARD, *versus* WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY

No. 18198

This cause came on to be heard on the petition of the National Labor Relations Board for enforcement of an order of the National Labor Relations Board made on October 21, 1959, in the proceedings known upon the records of the Board as Case Nos. 10–CA–3127, 3201, 3219, 3202 and 3218, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the petition for enforcement in this cause be, and the same is hereby, granted in part and denied in part and modified in accordance with the opinion of this Court.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. ~~376~~ 77

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WALTON MANUFACTURING COMPANY and
LOGANVILLE PANTS COMPANY.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

WILSON, BRANCH & BARWICK,
ALEXANDER E. WILSON, JR.,
ROBERT T. THOMPSON,
615 Rhodes-Haverty Building,
Atlanta 3, Georgia,
JAckson 4-3611,
Of Counsel for Respondents.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3036

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sequently, in April, 1961, the NLRB filed its Petition with this Court for Writ of Certiorari to the Court of Appeals. Respondents below file this Opposition to the Petition for Writ.

II. THE ISSUES RAISED BY THE PETITION.

The Petition for Writ raises the following issues:

A. Whether, despite the express statements of the Court of Appeals to the contrary, and despite the express recognition by the Court of Appeals of the valid, applicable principles of law governing review of Labor Board cases, and despite the express statement of the Court of Appeals that it was following and applying those valid, applicable principles of law, the Court of Appeals for the Fifth Circuit "grossly misapplied" that law in the present case and in a long line of other cases.

B. Whether the Court of Appeals' painstaking review of the record as a whole which led it to the conclusion and conviction that the Board's decision was not supported by substantial evidence but was based upon suspicion and surmise should be set aside upon the bare, unsupported accusation that the Court has "grossly misapplied" the law.

III. CONTENTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondents contend that the Petition for Writ of Certiorari should be denied for the following reasons:

A. The Court below, as appears on the face of the decision, took cognizance of and gave effect to the valid principles of law governing the scope of review of Board decisions as contained in Section 10(e) of the National

Labor Relations Act, as amended,[1] and the controlling decisions of this Honorable Court.

B. The decision below clearly shows that the Court of Appeals fairly and properly reviewed the record as a whole, recognizing the limitations upon it as to fairly conflicting inferences and Board prerogatives, and denied enforcement not on the basis of displacing the Board's choice between two fairly conflicting views but on the basis that the Board's inferences were unreasonable, unsupported by substantial evidence and based upon suspicion and surmise.

C. The Court below did not in any way misapply the law, grossly or otherwise, in this case but to the contrary stated and properly applied the law in the highest tradition of the Federal Judiciary.

D. That a fair appraisal of the record in this case, as a whole, such as the Court of Appeals made, can only lead to the conclusion that the Board's decision is completely unsupported by substantial evidence, that the General Counsel for the Board failed to carry the burden of proof and that the decision of the Board was the result of blind adherence to rigid formulae and surmise rather than judicial reasoning and a fair evaluation of evidence.

IV. REASONS FOR REFUSING TO GRANT THE WRIT.

The true question before this Court is whether a Court of Appeals must follow the mandate of Section 10(e) of the Act and consider the record *as a whole* (which this Court has frequently said that it must do) or whether it shall be confined to such evidence in the record as may

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1 61 Stat. 136, 29 U.S.C. 151 *et seq.*

be favorable to the Board's decision without taking into account whatever in the record fairly detracts from its weight. The Board's evidence in this case was an extremely meager amount of proof, to say the most for it. The inferences and conclusions which were drawn from that bare minimum of evidence both in the decisions of the Trial Examiner and the Board as well as in the Petition for Writ far exceed the facts. When this evidence is viewed in the light of the overwhelming evidence to the contrary, which was properly done by the Court of Appeals, it simply does not support the decision.

A reading of the opinion of the Court below clearly shows that the Court of Appeals was appalled at the complete lack of proof on the part of the Board. The basis of the refusal to enforce was not the substituting of fairly conflicting inferences but the realization that the Board had drawn unfair, illogical inferences. The inferences and conclusions of the Board were not based upon facts.

In effect, the Petitioner is contending that if there is any proof whatsoever to support the Board's decision, however meager, then the Court of Appeals must enforce. This has not been the law for a number of years.

The National Labor Relations Act, as amended, *supra*, provides in Section 10(e):

> "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record *considered as a whole* shall be conclusive." (Emphasis supplied)

Prior to the enactment of the Taft-Hartley Act the scope of review of Board orders tended toward a consideration of evidence viewed in isolation. As this Court said in *Universal Camera Corporation* v. *NLRB*, *supra*, at p. 478:

> "It is fair to say that by imperceptible steps regard for the fact-finding function of the Board led to the assumption that the requirements of the Wagner Act were met when the reviewing court could find in the record evidence which, when viewed in isolation substantiated the Board's findings."

It was under this view of the Wagner Act requirements, prior to Taft-Hartley, that the decision in *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U.S. 206, to which the Petitioner adverts (P. p. 18),[1] was reached. Of greater significance is the fact that the case of *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, was also prior to the Taft-Hartley amendment which expressly provided for review of the record as a whole. This Court in *Universal Camera* recognized that Congress intended to modify *Nevada Consolidated*:

> "This phraseology was adopted by the Senate. The House conferees agreed. They reported to the House: 'It is believed that the provision of the conference agreement relating to the courts' reviewing power will be adequate to provide such decisions as those in *NLRB* v. *Nevada Consol. Copper Corp.*, 316 U.S. 105, 62 S. Ct. 960, 86 L. Ed. 1305 and in the *Wilson, Columbia Products, Union Pacific Stages, Hearst, Republic Aviation*, and *Le Tourneau*, etc., cases, *supra*, without unduly burdening the courts.' The Senate version became the law." (pp. 485-486).

Furthermore, in *Universal Camera*, this Court stated:

> "From the legislative story we have summarized, two concrete conclusions do emerge. One is the identity of aim of the Administrative Procedure Act and the Taft-Hartley Act regarding the proof with which the Labor Board must support a decision. The other is

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1 "P." denotes the Petition for Writ of Certiorari.

that now Congress has left no room for doubt as to the kind of scrutiny which a court of appeals must give the record before the Board to satisfy itself that the Board's order rests on adequate proof.

"It would be mischievous word-playing to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. * * *

"Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. * * * (pp. 487-488).

* * *

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds." (p. 490).

Surely, in view of the above language, there can be no doubt that the underlying theory of the Petition for Certiorari in this case is fallacious. The very thing about which the Petition truly complains is likewise the very thing which this Court has said the Court of Appeals is required by law to do—review the record *as a whole*—

"take into account whatever in the record fairly detracts from its weight."

The Fifth Circuit has long recognized its duty and its limitations in reviewing Labor Board orders. The Court of Appeals in this very case specifically enumerated these duties and limitations. The Court of Appeals said:

> "The resolving of evidentiary conflicts is within the province of the Board." (P. A. 23).[2]
>
> "We are aware of the requirement that we are not to overturn the Board's findings if supported by substantial evidence in the record as a whole. We recognize the principle that the substantial evidence rule applies to the choice of inferences as well as to the finding of facts as facts. *NLRB* v. *Birmingham Publishing Co.*, 5th Cir. 1958, 262 F.2d 2. We do not question the settled doctrine that the Court should not, as a general proposition, disturb the action of the Examiner and the Board in crediting or discrediting the testimony of a witness. *NLRB* v. *West Point Manufacturing Co.*, 5th Cir. 1957, 245 F.2d 783; *NLRB* v. *Newton Co.*, 5th Cir. 1956, 236 F.2d 438."
>
> "This Court has had frequent occasion to announce and develop the doctrine that if it appears that there is substantial evidence on the record as a whole to make the inference of legal or illegal discharge reasonably equal, we may not overturn the Board's finding of an illegal discharge."
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> *N. L. R. B.* v. *Dan River Mills, Inc.*, 5th Cir. 1960, 274 F.2d 381, *N. L. R. B.* v. *Fox Manufacturing Co.*, 5th Cir. 1956, 238 F.2d 211; *N. L. R. B.* v. *Newton Co.*, 5th Cir. 1956, 236 F.2d 438; *N. L. R. B.* v. *McGehey*, 5th Cir. 1956, 233 F.2d 406; *N. L. R. B.* v. *Coats & Clark, Inc.*, 5th Cir. 1956, 231 F.2d 567; *N. L. R. B.* v. *Houston Chronicle Publishing Co.*, 5th Cir. 1954, 211 F.2d 848 (P. A. 26-27).

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2. "P. A." denotes Appendix to Petition for Writ of Certiorari.

The Court of Appeals then proceeded to analyze the record in the light of the above-stated principles. It is difficult to conceive of a more proper exercise of the review function of the Court of Appeals. Certainly the Court left no room for even an inference that it was neither aware of nor following the principles of law which apply to a case such as this. The Court stated:

> "As we must do in these 'substantial evidence' cases, we have undertaken the tedious task of reading the record and reviewing the evidence; tedious because of the necessity of going from the Board's appendix to the employer's appendix, and so back and forth from one to the other, in an effort to piece together the isolated excerpts of testimony which each party has extracted for the purpose of supporting the position for which it contends. The Board incorporates into its appendix nineteen separate quotations from the testimony of the witness, Morris Scharff, and the employer includes thirty-seven selections, from the testimony of this witness. The same is also true, to a lesser degree, with respect to the testimony of twenty-five or more of the other witnesses. Our decision is to be based upon the record considered as a whole. Parts of the record, taken out of context, are not to be considered piecemeal, but we are to consider the record in its entirety and as a unit. This we have attempted to do." (P. A. 20).

The detailed analysis of the record clearly establishes that the Court below did study the record as a whole and did make a fair evaluation of it. The Court of Appeals stated:

> "We have the *firm conviction* that there is not substantial evidence on the record as a whole that the discharge of Mrs. Yancy was wrongful. (P. A. 30).
>
> "We reach the same conclusion with respect to Grace McCart, Pearl Coker and Ruth Brooks." (P. A. 30).

* * *

"The Examiner, however, and the Board, rejected the reasons asserted by the Respondents and found the motive for the selection of the nine committeemen was their union membership. In so doing the Board placed its own evaluations upon the factual situations, assumed managerial prerogatives, and reached the conclusions that good business judgment would not have justified the Respondents in their selections for layoff and therefore, says the Board, the motive was the unlawful one." (P. A. 34).

"We reached the conclusion that the Board's General Counsel has failed to carry the burden of showing by substantial evidence on the record as a whole that the layoffs were discriminatory. * * *." (P. A. 35).

This Court has recognized that the review of the record in Labor Board cases is the statutory function of the Courts of Appeals. In the case of *Universal Camera Corp.* v. *NLRB*, *supra*, this Court said at page 491:

"Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals."

* * *

"A formula for judicial review of administrative action may afford grounds for certitude but cannot assure certainty of application. Some scope for judicial discretion in applying the formula can be avoided only by falsifying the actual process of judging or by using the formula as an instrument of futile casuistry. It cannot be too often repeated that judges are not automata. The ultimate reliance for the fair operation of any standard is a judiciary of high competence and character and the constant play of an informed professional critique upon its work." (pp. 488-489).

Again in *NLRB* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, this Court stated at page 502:

"* * * The court painstakingly reviewed the record and unanimously concluded that the inferences on which the Board's findings were based were so overborne by evidence calling for contrary inferences that the findings of the Board could not, on the consideration of the whole record, be deemed to be supported by 'substantial' evidence.

"Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders."

* * *

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situations we should 'adhere to the usual rule of non-interference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations.' *Federal Trade Comm'n* v. *American Tobacco Co.*, 274 U.S. 543, 544, 47 S. Ct. 663, 71 L. Ed. 1193."

The Petition for Writ of Certiorari alleges that the Court of Appeals for the Fifth Circuit has grossly misapplied the law in its review of the record in this case. In support of this position the Petitioner has argued some of the evidence, cited a few Fifth Circuit decisions, without discussion, and brought to the attention of this Court unexplained statistics. It is respectfully submitted that

this vicious and gratuitous attack upon the integrity of the Federal Judiciary is completely unwarranted and ill-conceived. The evidence and the illogical inferences drawn therefrom by the Board were more than amply considered by the Court of Appeals as appears on the face of its decision. The Court of Appeals' evaluation of this evidence and these inferences in the light of the entire record is clearly set forth in its opinion. The attention of this Court is respectfully invited to the decision of the Court of Appeals in answer to the argument on the evidence. Respondents' argument of these facts to the Court of Appeals is reprinted as an Appendix to this Opposition to the Petition for Writ.

The reference to a few previous decisions of the Fifth Circuit in support of the charge that this is one of a long line of cases wherein that distinguished Court has "grossly misapplied" the law, is unjustifiable. In the last two years the Fifth Circuit has decided more than seventy cases involving the NLRB. It has enforced the Board's decisions in a great many of those cases. It has enforced numerous Board decisions involving discrimination as well as other types of unfair labor practices.

The statistics upon which the Petition relies are meaningless and misleading. So many factors such as consent decrees, volume of cases, types of cases, are unexplained that the statistics alone provide no basis whatsoever for drawing conclusions so serious as those proposed in the Petition for Writ.

The Court of Appeals for the Fifth Circuit is a distinguished arm of the Federal Judiciary system. The Court is made up of jurists of the highest integrity and competency. The completely unwarranted accusation that this Court of Appeals would and did "grossly" misapply the law implies willful and unconscionable action on the part

of that Court. There is nothing in the decision in this case or in the cases cited by the Petitioner which would justify such an accusation.

"Corrective action" such as the Petitioner seeks in this case can only be the beginning of an evolutionary process whose logical conclusion is the obliteration of the review powers of the Courts of Appeals and the shifting of undue authority to the Board in direct conflict with the express mandate of Congress as found in the National Labor Relations Act, as amended.

For the reasons stated hereinabove the Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals should be denied.

WILSON, BRANCH AND BARWICK,
By: ALEXANDER E. WILSON, JR.
By: ROBERT T. THOMPSON.

APPENDIX

APPENDIX.

The following is a reprint, with slight modifications, of a portion of the Respondents' argument on the facts to the Court of Appeals in this case.

The Layoff of January 31, 1958.

The Respondents in this case commenced business in the Summer of 1957. They were newly chartered corporations entering into the garment business for the first time in Loganville, Georgia. Respondent Walton Manufacturing Company, the principal corporation here, is in the business of manufacturing and selling men's dress suits. Respondent, Loganville Pants Company, was engaged in the manufacture of the pants for men's dress suits, with Walton Manufacturing Company as its sole customer. Loganville Pants Company ceased operations on or about January 31, 1958, and has not operated since that time (R. A. 109).

The record in this case shows that Respondents started their operations with completely inexperienced workers. The management of the companies was highly skilled and very experienced, having been in the field for many, many years (Tr. 1359-1360).[1] It was necessary for the Respondents to retain the green, inexperienced personnel who started to work in the Summer of 1957. Naturally,

1. Hereinafter the symbol (R.) is used to designate Volume I—Transcript of Record; the symbol (R. A.) is used to designate the Appendix to Respondents' Brief; the symbol (B. A.) is used to designate the Appendix to the Petitioner's Brief; the symbol (Tr.) is used to designate the original transcript before the Board where necessary.

inefficiency and low production were to be expected during this period of training. Likewise, it was necessary to employ more workers to meet production requirements in the early months than would be expected to do the same work as skills were acquired and efficiency increased.

The garment business is seasonal in nature and this results in fluctuations from time to time in the work force. Temporary seasonal lags may be bridged by reduced hours. More prolonged drops bring about layoffs (R. A. 193-195).

So it was that in the late Fall of 1957, a combination of increased efficiency in production and curtailed production requirements combined to make necessary a sizeable reduction in Respondents' work force. IT IS IMPORTANT TO NOTE HERE THAT THE NECESSITY OR THE LEGITIMACY OF THE LAYOFF ON JANUARY 31, 1958, IS NOT IN ISSUE (R. 113; Tr. 751). The only issue with regard to the layoff involves the question of which employees should have been laid off and which retained.

The Trial Examiner made a detailed analysis of each individual choice involving alleged discriminatees and determined that each and every choice was erroneous and discriminatory in nature. His "reasoning" during the course of this analysis is so inconsistent and illogical at times that it almost surpasses the imagination. For example, Respondents' witnesses testified that four factors were considered in determining which employees were to be laid off. With clock-like precision the Trial Examiner took those factors and whichever one did not fit in each particular case he used it as a reason for discrediting the Respondents' witnesses. If Respondents' witnesses' said seniority was a controlling factor, then the Trial Examiner would brush that fact aside and concentrate his fire on

some other factor. If on the other hand another employee under consideration had seniority in her favor and the Employer did not give that controlling consideration then that provided a basis for finding a violation. A few days seniority held great significance in one case but three weeks was of no consequence in another. If an employee had been reprimanded or warned that was inconsequential. Conversely, if the record did not show a reprimand then that was a controlling factor. If the Respondents offered a comparison which could not be overlooked or explained away (which with this Trial Examiner was a practical impossibility), then the important factor was that Respondents neglected to produce additional comparisons. On the other hand, in the case of one non-production employee the controlling factor in the Trial Examiner's mind was that Respondents failed to show a comparison with anyone else—although the record showed that her job was abolished. Obviously, the choice of employees for layoff must include some intangible, subjective considerations. Certainly, when the decision is participated in by two, three or more individuals they would not be expected to use the same descriptive terms to explain the choice. It would seem unreasonable to expect each one of them to be able to list each and every factor leading to each and every decision. Yet, in this case each time there was the slightest variation in terminology between witnesses it became a giant inconsistency. Each time one witness listed a reason for a choice which another witness might have overlooked it became a deliberate fabrication. Thus, we are told that one witness' testimony that one employee's quality was "a little better" than another's is inconsistent with another witness' testimony that the same employee had "a greater potential and was a better operator." (R. 132) If the Respondents' supervisors had told an employee

she was doing better or gave any word of encouragement then that was evidence that the employee was discriminated against in the layoff. If there was no evidence of words of friendly encouragement then the absence of reprimands was important.

In a case of this kind, with as many hundreds of pages of testimony as this, it is absolutely fantastic to believe that not one single witness for Respondents uttered one single word of truth, except where something was useful against Respondents. It is incomprehensible to find that every last issue of credibility was resolved in favor of the General Counsel's witnesses and aaginst the Respondents.

The Trial Examiner finds that sixteen employees were laid off on January 31, 1958. The record indicates that there were at least twenty laid off by Walton Manufacturing Company that day and at the same Loganville's entire operation was suspended (R. A. 109). The effect of the ruling which the Board seeks to enforce is to hold, without equivocation that not one single member of the organizing committee should have been laid off in a major cutback in the work force. Therein lies the faliacy in their whole case. They got so carried away with making an example of this Employer that they forgot about evidence, they forgot about logic, they apparently forgot about the review powers of this Honorable Court.

The burden of proof in this case lies with the General Counsel. It is up to him to prove that each one of these layoffs was discriminatory. An examination of the record as a whole indicates that the General Counsel completely failed to carry that burden. The Trial Examiner's analysis of the layoffs deals almost entirely with his attempt to tear down and discredit Respondents' case. Even if he had been able to do this, at which he so miserably failed,

the stark reality remains that the General Counsel's case consisted entirely of the fact that these people were named in the letter as members of a fictitious organizing committee. It is respectfully submitted that this does not prove discrimination according to legal requirements. Moreover, the substitution of the unexpert opinion of the Trial Examiner and the Board in lieu of the direct, expert testimony of the Respondents' witnesses, does not provide a basis for a finding of discrimination. The Trial Examiner has applied a test of absolute precision to the layoff decisions. Such decisions, involving the relative merits of people, can never be absolute. Obviously, there are no black and whites in such problems but merely shades of grey. The consideration is not whether an employee's quality of work was so unacceptable that she should be discharged, as the Trial Examiner seemed to require. The proper consideration is whether her quality is lower than an employee who is to be retained. A layoff calls for a completely different set of considerations from a discharge. This simple fact seemed to escape the Trial Examiner completely.

Layoff of Lela Beaver.

The layoff of Lela Beaver is a perfect example of the Trial Examiner's approach to this whole thing. Quite a number of employees at the Loganville Pants Company were laid off on January 31. The remainder of the work force was transferred to the Walton Manufacturing Company. Lela Beaver was one of those who was laid off. *She was the only one of a large group in the Loganville group laid off on January 31, whose name was mentioned in the Union's letter. She is the only one laid off on January 31, from Loganville Pants Company named in the Complaint. There is no other evidence in the record*

which would support a finding of discrimination in the case of this layoff. On the other hand, the Respondents have related the reasons Lela Beaver was not transferred to the Walton plant at the time of the layoff. As in the case of any layoff, questions can be raised, comparisons can be drawn. There is no evidence, however, which would even hint that the factors which were presented were not valid and did not provide the basis for the decision. The reason Lela Beaver was laid off was that in reducing the work force it was necessary to consolidate the operation which she was doing with another job. It was considered that Lela Beaver would be slow in learning the other operation, *slower than the other girl*, Alice Lowe, and therefore Alice Lowe was retained to do her work and Lela Beaver's.

The record here is unquestioned that Beaver was unusually slow in learning and therefore a girl who was faster in learning was put on the combined jobs. The Trial Examiner and the Board rejected this unchallenged explanation for Lela Beaver's layoff. The question is whether this Employer must retain an employee for a new job who is admittedly slower in learning than another girl who is available (R. A. 166-167, 204, B. A. 165).

It is significant to note here the Trial Examiner's analysis of this layoff. He rejected the testimony of Beaver's former supervisor, Atha, who had absolutely no interest in the outcome of the case since she was no longer employed by Walton (R. 117). He *assumed* that Beaver's continuous makeup pay was due to the unavailability of work when the only conceivable basis for the assumption was Beaver's testimony that Hughley had made an offhand remark to her that she could make production if they had the work. Beaver's testimony does not show an expression from her that this was the reason. This certainly doesn't prove the fact and even if it did it wouldn't

support the Trial Examiner's findings since the basis of the layoff was her inability to learn a new operation. Then the Trial Examiner attempted to take advantage of a letter which was written by Morris Scharff to Counsel for Respondents in which he indicated that he wasn't sure of the basis for the layoff but assumed it was for poor work. This letter was admitted over objection of Respondents and Respondents contend that it should have been rejected. However, a reasonable reading of the letter clearly shows that Scharff was writing from memory without the benefit of his records.

The Trial Examiner made a big point of how many operations Beaver was capable of doing. Here again he attempted to inject a basic factor—versatility—which did not figure into the layoff. Inability to learn a new job was the basis. But the record does not support his finding that Beaver performed two operations while the employee retained performed only one. Beaver's job was setting flies and turning corners. This obviously was one operation which most witnesses referred to as setting flies. Alice Lowe's job was sewing on belt loops. There is absolutely no evidence that one of these jobs is easier than the other and yet the Trial Examiner, who certainly revealed no expertise in the garment field, *assumed* that Beaver's job was more difficult. Here again he is injecting a factor, *based entirely upon assumptions*, which did not figure in the layoff. It is interesting to note that the Trial Examiner himself referred to Beaver's job as "the operation of setting flies and turning corners." (R. 116). In conclusion, the Trial Examiner said that Beaver was equal to Lowe in quality, production and versatility—none of which is supported by the record—and therefore seniority (approximately seven weeks) should prevail. Typical Labor Board fashion, a criterion is adopted and applied in robot fashion

and if everything doesn't fit then it's wrong. The Trial Examiner and the Board refused to see the reality of the situation. It is fine to attempt to follow criteria where possible. But, here there was another compelling factor which no one denied and the Respondents have a right to follow it. The record simply does not support the Board's finding as to Lela Beaver.

Layoff of Nellie Hood.

Nellie Hood was a floorgirl. She delivered materials to the various operators and did odd jobs. Her job was abolished as a result of the layoff and the work which she was doing was absorbed by various other employees who were regularly engaged in more productive operations. The supervisor even did a portion of it. This was a sort of luxury job which could be and now is being done by the other workers. This is a logical place for a cutback when the work force is being reduced (R. A. 37, 158, 179-180, 213-214; B. A. 53, 161-162, 200).

The record clearly shows no illegal conduct was committed by the Respondents with respect to this employee. The isolated statement of supervisor Carter had no threat in it and was admitted so by Nellie Hood (R. A. 75).

The Trial Examiner's findings regarding Nellie Hood are unbelievably fantastic. About all he has found to say is that we failed to come up with a comparison between her and some other employee and he discovered an inspector who had less seniority who should have been explained away. Hood was not a production employee. She matched up bundles of cloth and hand carried them to the machine operators. She has no production quota: in fact, she produced nothing. *She simply did a job which Respondents could do without in a cutback and so it was eliminated.* Her job was eliminated, therefore, she was

laid off. It was a position layoff. This seems simple enough but the Trial Examiner insists that it be justified on a seniority basis with someone doing an entirely different, unrelated job. The burden of proof is upon the General Counsel. It is respectfully submitted that there is no evidence in the record to support the Trial Examiner's and the Board's findings as to Nellie Hood.

Layoff of Frances Elizabeth Johnson.

There were five operators in the lining section, Frances Elizabeth Johnson, Mary Barnes, Annie Brooks, Imogene Meeks and Odele Barnes. Mary Lou Partain also spent part of her time in the lining section. At the time of the layoff, two of the operators in the lining section were eliminated, Mary Barnes and Frances Elizabeth Johnson. Frances Elizabeth Johnson had only been in the lining section for six weeks, and certainly in the cutback, she would be laid off before the others. The other girls were more skilled in the operation and more valuable to the company. The work which she had been doing was absorbed by Odele Barnes and Imogene Meeks. *Now Mary Barnes was also laid off, but, unfortunately for her, her name did not appear on the Union's threat letter.* This is not to say that Frances Elizabeth Johnson was an undesirable employee. Because of her limited experience and skill, she was simply less valuable than others in the section. Those are the people you eliminate when you cut your work force (R. A. 36-37, 146, 178-179, 213-214; B. A. 52-53, 150-152, 174-175, 179-180, 200).

The factors which were given weight by the Trial Examiner with respect to this employee were that she was given a raise a few weeks before her layoff and had been complimented by the plant superintendent (R. 135). The record clearly shows that Johnson was given the raise

when she was put on the new job in the lining section as an incentive to work hard and develop her talents. *She was on a training program at the time of the layoff.* She was the fifth employee in a five girl section.

The analysis of Johnson shows that the Trial Examiner here confused grounds for layoff with grounds for discharge. There is no inconsistency in the testimony. All the witnesses testified that Johnson's work was not satisfactory, her quantity and quality were below par. But, she was in training. However, when it came time to layoff it would be ridiculous to retain a trainee and lay off an experienced operator. Nothing said by the Trial Examiner or the Board in any way overcomes the fact that Johnson was the obvious choice for layoff in the section where she worked.

Layoff of Ida Harper.

Ida Harper was hired in July, 1957, and performed the job duties of hemming the lining of the coat (B. A. 94-95). *Harper admitted having a substantial amount of repair work* (R. A. 58-59); *trouble with the machine she operated* (R. A. 59), *and makeup pay every week she worked for the Respondents* (R. A. 59-60), *which resulted from her not making production as required* (R. A. 60).

Harper further admits that no supervisor or anyone else connected with management ever spoke to her about unions (R. A. 61-62). In addition to the above, *Ida Harper admitted talking and laughing and generally staying away from her work* (R. A. 62; B. A. 102), *and being absent a great deal* (R. A. 64, 113-114; B. A. 143-144).

Ida Harper was laid off January 31, 1959 (B. A. 99-100). The record is clear that this alleged employee was laid off for being an unsatisfactory operator, for general

"horseplay" and because her job was only part time (B. A. 172, 141, 173; R. A. 212-213, 112-113).

The record contains no evidence of discrimination toward Ida Harper or of a discriminatory motive in her layoff.

The Trial Examiner's analysis of Ida Harper's layoff almost reaches the frenzy stage. He finds that Prosterman's testimony that she could not produce properly and that her makeup record was bad is inconsistent with Scharff's testimony that her work was unsatisfactory as to quality and quantity and both are inconsistent with Ewing's testimony that she was terminated for bad work. A great point was made of Ewing classifying Harper's termination as a discharge instead of a layoff—certainly a distinction which would not hold great significance outside legal circles. It almost gave the Trial Examiner apoplexy when she did explain that she didn't know whether the termination was classified a discharge or a layoff. Here again the Trial Examiner applied the test for a discharge in a layoff situation. He has twisted evidence, taken testimony out of context, added assumption and conjecture, and thrown out testimony as unbelievable where it interfered with his objectives. In effect the Trial Examiner, here as in the other layoff cases, has substituted his own judgment for that of Respondents' management personnel, who had years of experience in this field.

Layoff of Nellie Wood.

Nellie Wood was hired August 5, 1957, to perform the duties of edge basting and taping fronts (B. A. 103). This employee admits she did not have a regular job (Tr. 470) and that she handled overflow (R. A. 66). This employee testified she signed a Union card and attended Union meetings (B. A. 105), and that she received a ten cent

wage increase after she had complained about being switched around and had refused to run a machine (Tr. 479). This witness further admits requesting a transfer to the pants plant, because *there wasn't enough work at the coat factory* (R. A. 66). Wood also testified Morris Scharff stated to the employees that he had no intention of closing the plant (R. A. 66). It is to be pointed out that this General Counsel witness admitted that the Union people told her that if she signed the paper authorizing the use of her name in the Union letter, she couldn't be fired (R. A. 67). This is obvious proof of the Union scheme to gain preferential treatment for its adherents in the Respondents' operations. The bias and prejudice of the Trial Examiner is illustrated by his gratuitous addition to her testimony of the statement that the Union assurance was "presumably for her Union activity." (B. A. 18). If that had been true it would certainly seem that someone would have seen fit to put it in the form of evidence.

The case of Nellie Wood is one of the more ridiculous ones. She was a second stringer who helped one operator or another when there was an overflow of work. Obviously if she had been better than they, common sense would dictate that she be put on one of the jobs. *But the record is absolutely unquestioned that her work did not measure up to that of the other operators.* The Trial Examiner in his zeal completely misstated the evidence on this point. He said Prosterman testified that Wood *could* do the work as well as the other operators (R. 122). Actually Prosterman's testimony shows that under extensive cross-examination by the Trial Examiner he repeatedly said that Wood's work was inferior and finally speculated that she *might* have approached them if put on one of the jobs (B. A. 188-189). But still the fact remains that she wasn't then doing as well. Here again there is a misconstruction of

the facts. Scharff testified that Wood's work was below par but not sufficiently so as to bring about her termination. In other words, you wouldn't fire her for it—but in a layoff it is a controlling factor. *The fact also remains that the other two employees had seniority over Wood.* After making so much "to do" over seniority in the other cases it is breathtaking to find it brushed aside here. The logic of the entire Intermediate Report and Board decision is laid bare here. The Trial Examiner was so blindly determined to find against these Respondents that he absolutely became irrational. In the case of Nellie Wood he is suggesting that less competent employee with less seniority be retained over more competent, senior employees. The melodramatic reference to Mrs. Wood's demeanor on the stand brings to the surface the uncontrolled emotionalism which underlies the entire Intermediate Report. It might just as easily be said that Mrs. Wood was upset because of being forced to testify against her sincere wishes or she might just have been frightened by the Trial Examiner and his rapid-fire verbal exchanges with counsel and witnesses.

The record does not support the findings as to Nellie Wood. It is obvious that she herself does not consider that she was discriminated against.

Layoff of Evelyn Hudson.

Evelyn Hudson was employed in the sleevemaking section performing an operation known as sleeve tacking. Also in that section were employees Regina Hall who was making the seam and vent; Grace Barnes, who sewed the sleeve and the lining together and Bonnie Thompson, who closed the end seams. *The job which Evelyn Hudson was doing was the most mechanical (requiring the least skill) in this section, and the other operators had more ability and were performing more complicated work.* (R.

A. 175-176). It was therefore determined that Evelyn Hudson should be the one eliminated from that section, her job abolished and the work performed by the other operators along with their own (R. A. 37, 146-147; B. A. 54-55, 175, 176, 201).

The Trial Examiner put great weight upon the testimony of this Evelyn Hudson. Yet, an examination of the record shows that her testimony was contradictory, inconsistent and vague. She did not have a good memory (B. A. 130), and yet she vividly quoted remarks allegedly made to her by Morris Scharff concerning the Union letter (B. A. 131). Later on she admitted that she didn't recall the exact words used (R. A. 96). This witness testified that she could not do the job of fellow employee Regina Hall (R. A. 94), and admits that before and after being recalled, she could not perform the duties of making sleeves (R. A. 94-95, 97). Hudson also admitted that she failed to make production for her former employer and that she was fired for this reason (R. A. 96-97). The evidence further reveals this employee had considerable makeup pay (R. A. 98) and after being recalled was discharged on August 18, 1958, because she was unable to perform the duties assigned to her.

The Trial Examiner in his analysis of Evelyn Hudson's layoff again fell back on the standard Labor Board doctrinaire approach. He decided that seniority and versatility favored Hudson over the other employees who were retained. He discredited unchallenged testimony that her work was not on a par with that of the others and that she was less skilled. In other words he applied the criteria and finding one to suit his purpose he used it as the basis of his finding of discrimination. He is in effect insisting that every consideration employed in each case be likewise applied to all other cases. The law is not

that prohibitive. A realistic analysis of the rigid, austere standards applied by the Trial Examiner reveals them to be unbelievably harsh and unfair. Decisions involving the choice of one individual over another simply cannot be made to fit into a rigid formula (mathematical or otherwise). Respondents have repeatedly attempted to point out this fact but neither the Trial Examiner nor the Board even considered it. They simply tore into the Respondents' explanations with a vengeance and a vigor which only the most ardent advocate could duplicate. The resulting decisions reflect for all to see the dangers of the administrative proceeding. One man, the Trial Examiner, got it into his head that these Respondents had violated the Act and from that point on it was not a matter of judicial determination through the processes of reasoning and logic. From that point on it was a question of how he could best tear down, explain away, discredit, destroy, belittle, twist, misconstrue and avoid Respondents' testimony and arguments. But, when it is all over the General Counsel has still failed to carry the burden of proof and there is no substantial evidence in the record to support the Board's decision.

Layoff of Bonnie Hamilton.

Bonnie Hamilton set welts. She was laid off on January 31. Mrs. Hamilton and another Lucille Yancey both performed the same operation. Under the cut-back in production it was only necessary to have one operator on this job, and Lucille Yancey was considered a better employee. This is not to say that Bonnie Hamilton was an unsatisfactory employee. Certainly, no issue has been raised by the Respondents in this respect. But, that doesn't throw light upon the layoff since Lucille Yancey was not an unsatisfactory employee either. In the case of a layoff

unfortunately, employees who have proven themselves satisfactory must be laid off because there are not enough jobs to go around. The question in this instance, as in all instances, was which employees would be more valuable to the company under a cutback in operations. It was determined that Lucille Yancy was more valuable and therefore she was retained and Bonnie Hamilton was laid off. There is nothing in the record to challenge the wisdom of this decision. Even if there were there is nothing to support a finding of discrimination (T. A. 158, 174-175; B. A. 159-160, 43-44).

The Trial Examiner really had to stretch to make a finding of discrimination in the layoff of Bonnie Hamilton. In this case she and the other Yancey both performed the same job. Yancey's production record is substantially better than Hamilton's. Even a person who knows nothing about the garment industry would readily see the wisdom of this choice. About all the Examiner has really said is that he doesn't want to believe it. He points to an "inconsistency" which arises by one witness saying under oath that Yancey's work was a "little better" and another saying in a letter to his counsel that it was "much better." Then he says that a third witness' characterization of Yancey as having "greater *potential*" is inconsistent with both of the foregoing. On top of that he credits and relies upon the testimony of an unskilled unqualified floor worker (over the directly opposite testimony of at least three experts) to the effect that Yancey's work was not superior to Hamilton's. Then he adds as additional controlling factors that Respondent failed to compare Hamilton with other employees, without naming those others or giving reason for such a comparison, and of course the fact that Hamilton had a "few days" seniority over Yancey was a matter of utmost importance in convincing the Examiner

that the discharge was discriminatory. It is respectfully submitted that not one single point relied upon by the Examiner to find discrimination against Hamilton was valid and there is absolutely no evidence to support same.

Layoff of Pauline McGhee.

Pauline McGhee was also laid off on January 31. An employee by the name of Charlotte Findley was retained in preference to Pauline McGhee because it was considered that she had a greater potential and would thus be a more valuable employee. Pauline McGhee was basting bottom seams. Charlotte Findley was basting bottom lining. These jobs were very similar in nature and under the cutback in operations only one operator was required to do both jobs (R. A. 33, 175, 185, 211-12; B. A. 44-45, 169-171; Tr. 294-298).

The Trial Examiner found this layoff to be discriminatory for several interesting reasons. First he acknowledges that Charlotte Findley had more seniority than Pauline McGhee (although he is quick to point out that it is only a matter of three weeks). Where seniority was an important factor when it favored the employee laid off, and where three weeks was a significant period in one case and even a "few days" was considered important, now seniority not only is unimportant but he refuses to believe that this was the reason for the layoff. Then he refuses, without any supporting evidence to contradict the expert testimony, that Charlotte Findley had more potential or would prove to be a more valuable employee than McGhee. The Examiner deliberately misinterpreted the testimony of Prosterman that Findley earned more money than McGhee. An examination of the record clearly reveals that in the garment trade one employee "earns more money" when she produces more pieces per hour. Earn-

ings per hour are always the important factor in a piece rate operation such as this. The gross pay argument advanced by the Trial Examiner is merely a subterfuge. Even so, it is misleading even if gross pay were the proper test. The difference in the hours worked and particularly in the overtime and makeup pay are matters which cannot be overlooked.

The records show that Findley had less makeup pay (which is the difference between that earned and the legal minimum of $1.00 per hour) than McGhee throughout the entire history of their employment. The record also shows that Findley had no more makeup after the first week in December, 1957, while McGhee continued to have makeup for at least an additional month.

Finally the Examiner stated his real, and only, reason for finding that Pauline McGhee was discriminately laid off when he relied upon his "general lack of faith in the credibility of Prosterman, Myrtle Ewing and Morris Scharff" (R. 149). It is respectfully submitted that there is no evidence in the record upon which a finding of discrimination may be made as to Pauline McGhee.

Layoff of Violet Ewing.

Violet Ewing made welts. She was terminated on January 31, as a part of the cutback in production. Violet Ewing and Margaret Britt did similar work. In addition to their other work they shared the sewing of facings, a mechanical operation. The job which Margaret Britt performed was more complicated than the one performed by Violet Ewing. The decision was therefore made to retain Margaret Britt and have her do Violet Ewing's work along with her own rather than the reverse (R. A. 158, 174-175, 210; B. A. 199, 159-160, 43-44).

The Trial Examiner's analysis of Violet Ewing's layoff consists of a listing of several things which Respondent didn't do. For example, Respondent *didn't* reprimand Ewing for her unsatisfactory work. (This was not a discharge for cause but a layoff.) Respondent *didn't* compare Ewing with an employee named Madeline or explain why the two were not compared—although there is nothing in the record to indicate why they should be compared. The Trial Examiner just assumed that there should be such a comparison. Respondent did recall Ewing in October of 1958, and Prosterman is reported to have stated to Supervisor Higgins that she was a good worker. (*Again* she was not discharged for cause but laid off in preference to another employee.) The only other factor alluded to by the Examiner was seniority which again becomes important because it favors the alleged discriminatee. Those considerations—failure to reprimand and failure to compare with an employee whose full name is not even known plus commendatory remarks upon reinstatement and of course seniority—are the basis for the Examiner's refusal to accept Respondents' explanation for Violet Ewing's layoff. It is respectfully submitted that there is absolutely no validity to the Examiner's analysis and that each and every premise upon which it is based is false and meaningless.

* * *

The Trial Examiner stated his general conclusions regarding the layoffs (R. 151-154). An examination of these conclusions reveals that they are nothing more than a reiteration of his other findings. In effect he says that since he found other violations of the Act based upon other testimony (most of which is discussed at other places herein), then he finds the layoffs to be violations. It is extremely difficult to follow this logic. The record as a

whole does not support it. It is significant therefore that the Examiner found it necessary to turn to Mr. Uspensky's work on mathematical probability in order to support his conclusions. The Board tried to help him by throwing in a few more findings of violations of Section 8 (a)(1). But when it all boils down the one glaring defect in their case is that they decided it upon *mathematical probability, whim*, suspicion, conjecture, false assumption and pure and simple guess work.

Discharge of Lucille Yancey.

The case of Mrs. Lucille Yancey presents a perfect example of the Trial Examiner's predisposition to credit the Petitioner's witnesses while summarily dismissing Respondents' evidence. Regardless of the thoroughness with which it was presented or the reliability of the witnesses who testified.

Mrs. Yancey was discharged by Respondents on or about December 4, 1957. The reasons for the discharge were that Mrs. Yancey's work was poor, her attitude was generally bad and she was uncooperative. In spite of warnings about her sloppy work, make-up increased and her performance became increasingly poorer the longer she worked for Respondents, culminating in six straight weeks of make-up pay (G.C. Exhibit 29; R. 211).

Respondents produced six witnesses who verified that Yancey's performance justified her discharge. All were intimately familiar with Yancey's performance and represented not only supervisory staff (Scharff, Prosterman and Higgins), but also her fellow workers (Odele Barnes, Imogene Meeks and Ruby Berry), all of whom concurred in the testimony that Mrs. Yancey's work was unsatisfactory. The testimony of all the supervisors who acted

as overseers for Yancey, who were called and subjected to cross-examination, are consistent in their testimony that Yancey had been terminated for good and valid reasons. All witnesses agreed that Yancey's work was poor and full of mistakes. The evidence showed that she used the wrong color thread (R. 85), that she sewed the wrong facing on the wrong lining and that the darts were sewn on the wrong side of the lining (R. 89). In short the quality of her work was shoddy (R. 85-91).

It was further shown, however, that the defective work and production were not the only place where Yancey proved to be a poor employee. The evidence also indicated that in addition to being "incompetent", "undesirable" and "unsatisfactory", she also "grumbled", "complained" and was generally uncooperative and unruly (R. 87-88). Besides complaining about the cut of the coat which she admittedly had difficulty sewing (R. 91), she is quoted to have said off-handedly to her supervisor, "Now, listen you are going to have to make it a little easier on us around here." (R. 188).

The record further shows that Lucille Yancey signed a union authorization card (B. A. 60), but took no active part in organizing fellow employees (R. A. 46-47). This witness admits that no supervisor mentioned or discussed the Union with her (R. A. 46). It is further clear that Lucille Yancey was discharged on December 4, 1957 (B. A. 61, 168), before a single Union meeting had occurred (R. A. 46). The evidence reveals that Lucille Yancey was discharged for cause (R. A. 136-142, 151-152, 161, 186). Even after her discharge this witness admits that the Respondents did not know of her union activity (B. A. 65).

Yet the Trial Examiner in the Intermediate Report states:

"I am satisfied that Mrs. Yancey was discharged on December 4, 1957, because of her activity on behalf of the Union." (R. 98).

It is submitted that this employee had no Union activity other than signing a card, that there is absolutely not one iota of company knowledge of any such activity on the part of this employee, direct, indirect, imputed or otherwise. Scharff's testimony verifies this statement (R. A. 206).

Based on the facts of the record, it is submitted that the General Counsel has not carried the burden of proof and that the findings of the Trial Examiner with respect to this alleged 8(a)(3) violation are completely erroneous and unjustified by the record.

Two further points illustrate the fact that the Employer is understandably exasperated and completely nonplussed by the Trial Examiner's report and that Mrs. Yancey's testimony on its face indicated that she was not a credible witness. First, is the fact that Yancey (whose testimony was fully credited while Meeks' testimony was partly credited and partly discredited) (R. 90, N. 26, R. 94), testified that during the entire five months she had worked for Respondent she had *never* been given any instruction on how to do her work (R. 91). This statement is unbelievable. She had worked for over five months, had been admonished every day and had made Higgins weep, but she had *never* been instructed in her job! Further, she denied arguments with Higgins and other employees and said all her discussions were "routine"—(routine discussions but no instructions)—and all her discussions with Higgins were on a friendly basis. Respondents suggest that Mrs. Yancey's term "discussions", which she admits having, is a euphemism for reprimands and instruction. In addition to Yancey's claim that she was never

instructed on how to do her job, a statement made in the face of the admission that she had never sewn lining before, is the assertion that she never ripped out a single lining (R. A. 44). This is and of itself would lead one to doubt her veracity in view of the testimony of five other witnesses. This doubt is confirmed without question a moment later, however, when she says she did not rip out linings and that she sewed a completely "proper garment." (R. 45).

The other points regarding the tendency of the Trial Examiner to prejudge an employer and to arbitrarily give credit to one witness' testimony over the other without any reason is best illustrated by quoting one sentence from his opinion

> "The only testimony regarding Yancey's alleged failure to distribute fullness properly was that of Prosterman and Higgins, whom I generally discredit, and moreover even if it occurred which I doubt, I am not persuaded that it was due to any lack of ability on the part of Mrs. Yancey but rather to the *skimpy* cut of the lining which she admittedly and frequently called to the attention of her supervisor." (Emphasis supplied)

Certainly we had administrative expertise here, the Trial Examiner, unknown to anybody in the hearing, claims to know how to manufacture clothing. Yet he never examined the goods, never mentioned that he knew anything about the clothing business and never held Yancey up as an expert. This conclusion is unjustifiable.

These facts together with the clear indication that the Trial Examiner's predisposition in this matter supports the Employer's contention that his finding regarding the creditability of witnesses are not supported by the evidence and are ill founded.

General Counsel, in his brief, and the Trial Examiner, in his opinion, expound the virtues of Mrs. Yancey by showing that Mrs. Yancey had some past experience and that she had never been criticized for her work. Respondents' position on all such assertions by the General Counsel and on all the employees alleged to have been discriminated against, is that the experience asserted in favor of many of these people means nothing for the following reasons. First, some experience can be worthless or actually detrimental, especially in this type of operation since the product was a finished quality men's coat. The sloppy and hurried methods used in the manufacture of cotton pants would hardly be transferable to those required in this plant where less workable cloths are used. Mrs. Yancey's experience was in a work clothes' plant at "Carwood". The Trial Examiner made no distinction between these two type operations. None of these factors can be meaningful out of a comparison with all other employees in the plant —their experience may be important—more important, however, is the kind of experience they had. Other factors, such as quality of work produced, and their attitude, were given greater weight by Respondents.

Items such as make-up pay, work to be redone and Respondents' push for more production were a substitute for outright criticism. It would be hard to believe that they did not know when they were doing a substandard job. Besides this fact, another point which General Counsel attempts to make is the fact that supervisors Prosterman and Morris Scharff's reasons for layoff were not consistent. Prosterman said that there was not enough work for her (R. 84; B. A. 62) while Scharff told her that her work was "unsatisfactory" (R. 84; B. A. 63). The Employer asserts that in the existing situation where a cutback was concededly necessary that Petitioner is attempt-

ing to force a distinction here where there is none. Both witnesses were saying in effect that Mrs. Yancey's work was substandard and under present conditons she could not be retained. The problem was that Prosterman was given the job of firing her and he tried to do so as diplomatically as possible. Insofar as Lucille Yancey's statements regarding her *belief* that she had been terminated because of her Union membership, we point out to the Court that they were specifically denied by Morris Scharff (Tr. 86). In such a case the direct evidence should certainly prevail over the conjecture of an interested party. The Trial Examiner credited the conjecture without apology. Noteworthy, also, is the fact that contrary to General Counsel's statement that the records did not show poor work or that the production was unsatisfactory, the payroll records (B. A. 211, G.C.'s Exhibit 29) prove that Mrs. Yancey had six weeks of straight time, eight weeks in which she made production and eight weeks in which she did not make production. Six of these weeks in which she failed to make production occurred just before she was terminated. At this time she had had six months training in Respondents' plant in addition to her other six years vast experience with Carwood. Later, when Yancey had a change of heart, General Counsel admitted the fact that Morris Scharff refused her offer to defect and become a turncoat against the Union (R. A. 206). Scharff was presented with a real opportunity here to do irreparable harm to the Union's organizational drive. It is to Scharff's credit, however, that he decided to forego this opportunity which would have been irresistible to a person dedicated to anti-unionism and very tempting to the average employer.

The incongruity and hollow ring of this case arises in the presumption indulged in by the Trial Examiner that all the Employer's acts were a mere pretext for his ven-

geance against the Union. These actions, however, cannot be fitted into the neat pattern which General Counsel has laid out in his alleged proof.

If the evidence of this case is fairly read, the General Counsel has not made out his case. There is no evidence that the Employer knew of Yancey's Union leanings (R. A. 206, 46-47). She was not a member of the Union when she was fired. A short time after Prosterman became head of this operation she was fired—there was no delay. The Company acted decisively when they felt justified in making a definite judgment on this employee.

Discharge of Grace McCart.

In the case of Grace McCart, who was discharged on January 10, 1958, the Court is again provided with direct and disinterested testimony to overcome the false assumptions, implications and innuendos which are relied on by General Counsel and the Trial Examiner in this case. The Employer submits that the testimony of Mr. Scharff, Mr. Prosterman and Mrs. Ewing, supervisors, and Sara Sanders and Charlotte Towler (disinterested employees of the Company) will dispel any doubt as to the incompetency of Grace McCart. McCart was discharged because of bad work (R. A. 29-31, 112, 120-124, 200-201, 215). She was admonished about the substandard quality of her work on numerous occasions (R. A. 112). In addition to McCart's difficulty with the thread, colors, machine and declining production, McCart also had difficulty with her supervisor, Myrtle Ewing, "on many occasions". (R. 98-100; R. A. 50). The aggregation of these "difficulties" led to McCart's discharge.

The Trial Examiner throughout the hearing required a high degree of explicitness of all Respondents' witnesses

He completely discounts, for instance, the testimony of two of Respondents' inspectors, who said that they found places where the thread skipped on collars and coats sewn by Mrs. McCart, because it was too vague. Yet, the Trial Examiner blandly offers the production records of October 11, *1958* (R. 101), a year *after* McCart's discharge, as definitive evidence that Prosterman's testimony regarding her poor production was inconsistent. Respondents are obliged to point out that what ever production rate McCart may have been able to achieve more than a year *after* her discharge and after she started to work again, is not relevant evidence to the period in question, *viz.*, around October, *1957*.

On another occasion General Counsel tried to establish the point that the reasons for McCart's discharge were (1) the malfunction of her sewing machine (which happened to be new), and (2) McCart's Union activities. If we are allowed the same presumption as the Trial Examiner indulged in, the Employer respectfully submits that no self-respecting businessman, Scharff included, who wanted to stay in business, would permit the malfunction of a small item such as a sewing machine which eliminates the effectiveness of an employee's work. Her wages would more than pay for a new machine in a very short time. The testimony shows and the Trial Examiner admitted (R. 98) that the machine was new and that the plant mechanic repeatedly fixed the machine and was continually checking it. It seems reasonable then to assert that the real reason for McCart's failure to make production was not the machine but her own inability to master the operation. McCart alleged the machine wouldn't do as good work on gaberdine material as on other materials (R. A. 50; B. A. 83-84). General Counsel's witnesses, Hester McCart and Mary Alice McWaters, however, testified gaberdine did not

give any more trouble than any other material (Tr. 514) and that the "Lewis Blind Stitching Machine" worked satisfactorily (B. A. 110). This leaves but one conclusion; any failure of the machine to operate properly was the fault of the operator. McCart also testified that she had another machine at her disposal if her machine happened to malfunction (Tr. 400). The Trial Examiner blithely overlooked this fact when he attributed so many of McCart's shortcomings to the equipment with which she worked (R. 102).

Insofar as McCart's Union activity is concerned, Morris Scharff testified that at the time Grace McCart was discharged he did not know whether she belonged to a Union or not (R. A. 201, 221). This testimony is again indicative of the fact that the sole reason for McCart's discharge was not her Union activity but her continual incompetency as an operator. The record reveals this employee had make-up pay (Tr. 391), was poor as a sewer (Tr. 887), produced bad work (R. A. 116, 120-122; B. A 84-86, 140, 144) and was corrected regularly about her work (Tr. 888). She was discharged on January 9 or 10, 1958, by both her supervisors and told that her work was unsatisfactory for so long that they had to let her go (B. A. 84; Tr. 907). The only reason she had not been discharged before, according to the supervisor, was that supervisor Prosterman had no one else available in the factory to use the Lewis Felling machine (R. A. 178).

Mrs. McCart, in her testimony related a conversation which she had with Morris Scharff *after* her discharge. General Counsel, in making much of this conversation, does not emphasize or even mention the fact that Morris Scharff, when presented with her accusation that she was fired because of Union activities, denied this fact and promptly ex-

plained to her that the real reason for her discharge was her unsatisfactory work. Neither is the fact mentioned that it was McCart, not Scharff, who first introduced the subject of Union into the conversation. On her inquiry, Scharff, who was evidently surprised by this accusation since he knew nothing of her union activity, then felt free to discuss the matter with this discharged employee. Respondents fail to see how this conversation, initiated by Mrs. McCart and in which the Union was discussed, shows any animus on Respondents' part, particularly in view of the fact that he specifically denied the fact that Union membership had anything to do with her discharge at the outset of the interview.

It is important that Counsel for the General Counsel never established that this employee had signed for the Union or engaged in any Union activity. Thus, the Trial Examiner has, in a conversation occurring *after* her discharge between the alleged discriminatee and Morris Scharff, found that the Respondents discriminated in respect to the hire and tenure of employment of Grace McCart (R. 102).

Outside of this conversation with Scharff, Mrs. McCart admits in her testimony that she had never been interrogated regarding her Union activity by any member of management in the plant (R. A. 51).

The *facts* as shown by the testimony indicate that Mrs. McCart was an incompetent employee. The testimony of numerous witnesses verifies this fact. She had trouble with Myrtle Ewing and the machine, in spite of the fact that the machine was brand new and she had another one available (R. A. 51). After her discharge she had a conversation with Morris Scharff in which she interjected the subject of union in the conversation, and after Scharff de-

nied he had discharged her because of her Union activity, a short discussion on unions resulted in the natural course of events. Respondents respectfully aver that the paucity of evidence is insufficient to sustain General Counsel's contentions of discriminatory discharge.

Discharge of Pearl Coker.

Mrs. Pearl Coker was discharged because she could not produce a sufficient quantity of work and because her operation was absorbed by three other employees, Mary Lou Partain, Hester McCart and later Louise Sammons. Mary Lou Partain, a Union advocate whose name had appeared on the letter sent to the Employer by the Union, as a member of the organizing committee, was retained over Mrs. Coker.

These circumstances prove that Respondents' predicament was a hopeless one. Unless Respondents laid off Hester Lou McCart, a concededly superior worker, they were placed in the unhappy situation of choosing between two Union employees for the layoff. As later developments proved, there was no possible way to win in such a situation—allegations of discrimination waited for them either way they turned. Higgins testified that the section was too "strong"—meaning they had too many employees on this operation. Thus, one operator had to be laid off. Since there had to be a layoff, Pearl Coker was chosen because she was a slow operator and she apparently could not make production (R. A. 143; B. A. 149-150). Neither could she set a collar properly nor adjust its fullness correctly. Frequently, Coker's work had to be redone (R. A. 143). Although Partain's work left much to be desired and she was admittedly slow in this operation, it was decided that because of her ability to perform additional operations she would be retained. Coker made no pretense

of being versatile and at that particular time a versatile operator was needed until Louise Sammons could return to work (R. A. 217-218). Partain was then soon moved to utility girl where she properly belonged. Thus Partain was Pearl Coker's temporary replacement until Sammons could come back for the Spring season, from a leave of absence (R. A. 84). Partain was kept on in order to maintain some degree of flexibility in the operation.

Pearl Coker was rehired some eight months later to fill in a gap in production. The reasons for the rehiring were that Mary Lou Partain had quit in the interim (R. A. 145) and Mrs. Coker would not need retraining. Further, the quantity of garments needed was higher than it was in January, 1958. Coker, it was judged, could supply just about the amount of production needed to balance the section's production with the rest of the shop. A faster operator would have produced too many collars and created an imbalance. This explains the hiatus period to which the Trial Examiner referred (R. 106, fn. 38).

Contrary to the General Counsel's glowing opinion of Mrs. Coker and the statement that her work was never criticized, Mrs. Coker's testimony admits that she continually had make-up pay, even up to the time she was fired on January 15, 1958 (R. A. 47-48). Certainly, this is a form of criticism and considering she was apprised of the fact, it is difficult to see how one can assert that she was not criticized. Mrs. Coker testified on cross-examination that she did not actively work for the Union and never signed anyone up for or attempted to sign up anyone for the Union (Tr. 357). General Counsel points to the fact that on January 10, 1958, Pearl Coker told her supervisor, Grace Higgins, that she had attended a Union meeting the previous evening and that shortly after making this statement she was discharged. This

coincidence was apparently enough for the Trial Examiner to find that there had been a discriminatory discharge. In order to justify his position the Trial Examiner referred to a conversation which was supposed to have taken place between Mrs. Higgins and Mrs. Coker in which Higgins was alleged to have said that Morris Scharff had informed them in a supervisors' meeting that he would close down the plant before they would allow Union labor in the plant. What was not referred to in this conversation, however, was the fact that there was at least one other employee present at this conversation. Not only was she not mentioned, but she was not called upon to corroborate this hearsay testimony. Hester Lou McCart was present and overheard the entire conversation (R. 106).

Strangely enough, however, McCart did not hear Higgins give the account of the supervisors' meeting (R. 106, Tr. 598). Higgins likewise did not remember giving the account of the supervisors' meeting where this statement was alleged to have been made (R. A. 148). It would be difficult to believe that such a statement was made in view of the other circumstances in the case. Certainly, if it had been made Hester Lou McCart, another employee who was present, would have heard it, and certainly would have been much more impressed with that than with the original remark by Pearl Coker about attending a Union meeting. Presumably, this testimony was offered for two purposes, one, to get in the alleged threat by Grace Higgins and the other to prove that the Company knew Pearl Coker had been to a Union meeting about the time she was fired. This was January 15, six weeks or so after the Union campaign had started. It does not seem logical that the Company would at this time fire an employee who had simply attended a Union meeting and who

came to her supervisor and advised her of the fact. She did not say that she had joined the Union or believed in the Union, she simply stated that she had been to a meeting, and that is the General Counsel's case with regard to Pearl Coker. The facts show that Pearl Coker was discharged for reasons entirely apart from her attendance at a Union meeting. In the first place, Pearl Coker was unable to produce the quantity that was needed on her job. A comparison between her production (G. C. 37) and that of Hester Lou McCart (G. C. 38) illustrates this point better than words. The same point is illustrated in comparing Coker's record with that of Louise Sammons (Respondents' Exh. 43). The record is unquestioned that more production was required from the particular job that Pearl Coker was doing. Another operator who had previously been employed and was known to the management to be competent and more efficient than Mrs. Coker was available. Three operators were not needed on the job if you had two good ones. Hester Lou McCart and Louise Sammons were both better operators, as the records show, than Pearl Coker, and for that reason, and that reason alone, Pearl Coker was discharged and Louise Sammons was put in her place. Mr. Prosterman summed up the circumstances surrounding Pearl Coker's discharge in the following words: "I had two operators available who were capable of turning out production and earning a great deal more and I thought Pearl Coker was surplus." (B. A. 42; Tr. 238). This is also supported by the uncontested evidence (B. A. 148-150, 198-199; R. A. 143-145, 208; Tr. 1024-1028, 1444-1445).

The evidence clearly shows that the General Counsel has not carried the burden of proof in proving company knowledge of Pearl Coker's Union activity. The Trial Examiner in finding Pearl Coker to be an alleged 8(a)(3)

has based his findings on a statement made by Morris Scharff wherein it is admitted he stated that it was common knowledge in the community that Coker was for the Union (R. A. 201; B. A. 196). The record does not support a finding that the Respondents were aware of Coker's activities at the time of her discharge. However, granting *arguendo* this is true, there is nothing in the record to show discrimination in respect to this alleged 8(a)(3) violation. It is therefore submitted that the evidence clearly reveals that this employee was discharged for just cause and that the Trial Examiner's findings with respect to Pearl Coker are not supported by the record.

Based on the facts presented in the record, Respondents submit that a thorough reading of this testimony, stripped of any facts supplied from outside the record, will yield no other conclusion except that this employee was justifiably discharged.

Discharge of Ruth Brooks.

Ruth Brooks was discharged from the pants plant on January 16, 1958, by Mr. Hughley (R. 109). Mrs. Brooks admitted that she did not make production and that she had difficulty doing the work. The conceded facts are that layoff was necessary and that the work force was to be severely cut from approximately thirty-eight operators to twenty-two operators (R. 102, 113). Any vague accusation as to discrimination in the discharge pales under the weight of this evidence. There can be no dispute, contrary to the Trial Examiner's assertion (R. 111, n. 40) that there was not a reduction in the work force since in three months time the employee complement dropped from forty-three to twenty-six employees and ultimately to nineteen (Respondents' Exch. 7).

General Counsel apparently, having developed an affinity for the mock epic style in writing this brief, has begun every discussion of each discriminatee by extolling their experience, the quality of their work, the fact that they have *never* been criticized because of their work, etc., *ad infinitum*. They have been presented in grand style. The true facts concerning this employee furnish another example of why the alleged virtues of this employee are not founded upon real evidence. The allegations by the General Counsel and Trial Examiner that Ruth Brooks had had a great deal of qualifying experience, had *never* been criticized in her job and was a "good" operator are gross misstatements of fact. Specifically, the uncontradicted evidence shows that (1) in spite of Ruth Brooks' experience she was a poor employee and by her own admission had an abnormal amount of make-up (R. A. 81). (2) that the statement by General Counsel and the Trial Examiner that Ruth Brooks was *never* criticized is a misstatement of fact is made explicit by the testimony which indicates that Ruth Brooks was fully apprised of her inadequate performance, was distressed about it, and was criticized directly and forcefully. The following specific testimony illustrates that fact:

> "Q. Did you have difficulty doing the work that you were doing down there?
>
> A. At times.
>
> * * *
>
> A. I told her about the different places that I had worked before and that I had always made production everywhere I worked until I came here. And there was something wrong somewhere why I couldn't make it.
>
> * * *

A. I went in to see him one morning and he was back there at my machine and we talked about my operation and I told him that I wasn't satisfied with it. And he said, "Frankly, I'm not either.'

Q. Now, when you were told to go up to the other plant and report—you remember testifying to that?

A. Yes.

Q. Why didn't you go up there the next day?

A. Because I was with Lucille Yancey the morning that she asked Arthur Sharff about any of the employees being transferred to the pants department. And he said that no one would be transferred whatsoever. And after I had talked with him about—he told me that I either—I talked tc Morris, and he told me that I either had to get my production or else * * *."

(3) the reasons offered by Respondent for Ruth Brooks' discharge were that she did not produce enough. Contrary to the General Counsel's assertion, that her work was "on a par with other employees", the above excerpts from the testimony clearly indicate that her work was, in fact, below par, and (4) indicative of the fact that the Trial Examiner's assertion that this employee was beyond reproach actually misconstrues the testimony is revealed by the incident in the record which shows that this employee did at one time commit an act of insubordination. Ruth Brooks testified that she was instructed by her Employer to report to the pants plant for work the next morning. She admits that on that occasion she turned and walked off without making any reply and did not report to work the next morning as directed. Certainly, if the Employer were looking for an occasion or a reason to discharge an employee he was provided with a golden opportunity at this point. The fact is, however, that he wished to give Ruth Brooks a chance to prove herself and make production in

the pants plant, the facet of his operation which required less skill.

Further justification for the discharge of this employee, if justification is necessary, is the fact that the personnel of the pants plant fluctuated from forty-eight employees to nineteen employees, over a three to four month period, and that both of Respondents' operations were in the process of being moved into one building. Under such circumstances it is strange that an employee whose profile as a worker is graphically depicted above should be released. Indeed, it is strange that anyone could question the discharge or the fact that in this as in other instances the quality of mercy was in fact strained to the limit.

Finally, if we accept as true General Counsel's statement that this employee was "on a par" with other employees, and if we consider all Employer's actions in a framework of curtailed business operations and production cutbacks, necessitating a layoff, then these uncontradicted facts alone would be sufficient to justify the Employer's discharge of this employee. To permit the Trial Examiner to say that they do not is to allow his judgment to displace the sound and reasonable exercise of Respondents' business judgment. Such action on these facts cannot be justified.

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No. 77

In the Supreme Court of the United States

OCTOBER TERM, 1961

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WALTON MANUFACTURING COMPANY AND LOGANVILLE PANTS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D.C.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COMER,
Assistant General Counsel,
RUSSELL SPROTT,
Attorney,
National Labor Relations Board,
Washington 25, D.C.

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OPINIONS BELOW

The opinion of the court of appeals (R. 721–733)[1] is reported at 286 F. 2d 16. The findings of fact, conclusions of law, and order of the Board (R. 57–161, 252–264) are reported at 124 NLRB 1331.

[1] Since the three volumes of the record are consecutively paginated, the specific volume number will not be cited. The page references preceding the semicolon are to findings by the Examiner and Board; the page references following the semicolon are to the supporting evidence in the record.

JURISDICTION

The judgment of the court of appeals (R. 734) was entered on January 6, 1961. The petition for a writ of certiorari was filed on April 6, 1961, and was granted on October 9, 1961 (R. 749, 368 U.S. 810). The jurisdiction of this Court rests on 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 51–55.

QUESTION PRESENTED

Whether the court below, by setting aside the Board's findings that employees had been discharged and laid off for union activity, "grossly misapplied" the standard of review laid down in *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 488, by "displac[ing] the Board's choice between two fairly conflicting views."[2]

STATEMENT

A. THE BOARD'S FINDINGS OF FACT AND THE SUPPORTING EVIDENCE

The Board found that respondent,[3] a manufacturer of men's and boys' clothing, had interfered with, re-

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[2] A related question is presented in *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, No. 94, this Term, set for argument following the present case.

[3] The two respondents—Walton Manufacturing Company and Loganville Pants Company—will be referred to as the Company or the respondent. The Board found that, since the two respondents were commonly owned and managed, and functioned as an integrated operation, they constituted a single employer for purposes of the Act (R. 61–62).

strained and coerced its employees, in violation of Section 8(a)(1) of the Act, by keeping union organizers under surveillance, threatening employees with economic reprisals if they joined the Union,[4] and interrogating employees concerning the Union's activities. The Board also found that respondent violated Section 8(a) (3) and (1) of the Act by discharging four employees, and laying off nine others, because of their union activity.[5] The facts supporting these findings may be summarized as follows:

1. *The Company's acts of interference, restraint and coercion.*—In November 1957, the Union embarked on a campaign to organize respondent's employees (R. 65; 276–277). The Company countered with a letter to all employees announcing new employee benefits, including additional holidays, paid vacations, and a pension program, and emphasizing that "* * * no employee has to pay dues or initiation fees to any outside union * * * for the privilege of working here" (R. 65; 474–477).

On November 30, J. B. Stephens, a brother of one of respondent's supervisors and himself an employee of the Company, followed, in a car, union organizer Broom as she visited the homes of several of respondent's employees to solicit their support for the Union (R. 66–68; 286–294). The car used by Stephens was owned by Morris Scharff, the Company's principal

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[4] Amalgamated Clothing Workers of America, AFL–CIO.

[5] The issue in the present case arises from these latter findings. The court below sustained, with two exceptions, the Board's findings with respect to the other violation of Section 8(a)(1) (see *infra*, p. 23).

managerial official (R. 66, 64–65; 190–191, 294–295, 719–720). Stephens reported back to Scharff, and took him to a restaurant where Broom and several other organizers were having lunch (R. 66; 719). Stephens pointed out the organizers' cars to Scharff, who copied down the license numbers (R. 66; 286–287, 719).

In the next two months, Scharff and respondent's supervisory personnel engaged in widespread efforts to determine which of the employees had joined the Union and to induce them to reject it. Following one union meeting, Scharff questioned employee Grace McCart (see *infra*, pp. 7–8) as to whether she attended the meeting and whether she knew who else was there. McCart indicated she had been present, but refused to name anyone else. Scharff replied that he knew everyone who had attended anyhow, and proceeded to identify three employees—Pearl Coker, Ruth Brooks, and Jeanette Beaver—whom he considered to be very active in the Union's organization attempt (R. 73; 352–354, 461–463). Similarly, Supervisors Ewing, Carter and Atha asked several employees whether they had been contacted by the Union and what they knew about it (R. 256–257; 342, 380, 429, 431–432).

During this same time, Company representatives made threats to close the plant and threats of discharge. Shortly after the surveillance of the union organizers, Scharff made a series of speeches[6] to the

[6] Scharff's speeches were from the same notes and hence their content was substantially the same (R. 70).

employees concluding with the statement (R. 69–71; 357–358, 365–366, 471):

> * * * [I]f you want a Union shop, you are going to have it without me, because I have had my stomach full of Unions, because I can't take orders from New York. I can't take an order to be unfair to one person or another. I will have no part of it.

Subsequently, Scharff told employee Lela Beaver (see *infra*, pp. 12–14) that, if the Union came in, he would "go out the back door" (R. 117; 333). Supervisor Higgins informed employee Pearl Coker (see *infra*, pp. 8–9) that the Company had announced at a supervisors' meeting that it would close the plant rather than operate with a union (R. 76; 336–337). Similarly, Supervisor Myrtle Ewing warned employee Pauline McGee (see *infra*, pp. 20–21), while she was discussing the Union with two other employees at lunch, that "[i]f you don't want to dig your own grave, you had better shut up talking about the Union" (R. 76–77; 304); and she told another employee—her sister-in-law Violet Ewing (see *infra*, pp. 16–17)—that "Morris [Scharff] said that he didn't care how good an operator a girl was, or who she was, * * * he would fire her if he found out she had joined the Union" (R. 77; 342).

2. *The discharge of four employees active in the union effort.*—(*a*) *Lucille Yancey.*—On December 4, 1957, respondent discharged employee Lucille Yancey, an experienced garment worker (R. 83–84; 326–328). Yancey had joined the Union about ten days earlier, and had let the organizers use her home during the

membership drive (R. 84; 328). Plant Superintendent Prosterman[7] told Yancey that there was not enough work for her (R. 84; 329). Yancey insisted on seeing Scharff, who first repeated the reason given by Prosterman, and then, when Yancey stated that there must be another reason, added that her work was unsatisfactory (R. 84; 329–330). The following day, Yancey returned to Scharff's office to inquire further into the reason for her discharge. According to Yancey's testimony, accepted by the Trial Examiner and the Board, Scharff handed her a union paper. Her testimony continues: "So I told him, I said, 'Morris that's another reason you're laying me off.' And he said, 'Well, Lucille, I tell you, I've heard that you and your husband[8] have been working with the union organizers' " (R. 84; 331). Yancey then offered to vote against the Union if Scharff would reinstate her, but he replied that he would not unless the organizing attempt failed (R. 85; 332–333).[9]

Respondent's witnesses testified that the quality and quantity of Mrs. Yancey's work was poor, that she was uncooperative, and that she was discharged for these reasons (R. 85–89). Yancey conceded that she had some trouble sewing linings on coats, but attributed this to the skimpy cut of the material; she added that she had never been told prior to her

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[7] Prosterman is frequently referred to in the testimony as "Mr. Murph" (R. 269).

[8] Yancey's husband was employed as a paid representative of the Railway Clerks Union (R. 85, n. 21).

[9] Scharff's denial that he made the statements attributed to him by Yancey was specifically discredited (R. 97).

discharge that her work was unsatisfactory, but, indeed, had received favorable comments from her supervisors (R. 83–84, 91–92, 94; 326–327, 521–524). The Trial Examiner and the Board credited Yancey's testimony and disbelieved that of the respondent's witnesses (R. 92–96, 94, 252).

(*b*) *Grace McCart.*—Grace McCart attended a union meeting on January 9, 1958 (R. 99; 352–353). The following day, Superintendent Prosterman discharged her, allegedly because too much of her work was bad (R. 99; 351). Not satisfied with Prosterman's explanation, Mrs. McCart went to see Morris Scharff on January 14 (R. 99; 352). Scharff at first told her that she was discharged because of her work, but, when McCart pointed out that she had not received any prior complaints, Scharff asked whether she had attended a union meeting the night before. McCart admitted that she had, and asserted that this was the real reason for her discharge. (R. 100; 352–353.) Scharff then proceeded to interrogate McCart about the meeting, and asked for the names of the employees who had accompanied her (R. 100; 353). McCart refused to divulge the names of the other employees. Thereupon, Scharff replied that he already knew who was at the meeting, and named three employees—Pearl Coker, Ruth Brooks, and Jeanette Beaver—whom he regarded as "heavily pro-union and active in the organizing attempt" (R.

100; 353–354, 462–463).[10] Scharff refused to reinstate McCart, but told her that there might be work for her later on (R. 100; 529). Six weeks later, after the organizing attempt had failed, McCart was rehired for the same job she had performed prior to her discharge (R. 102; 530).

Respondent's witnesses testified that Mrs. McCart was discharged because of a continuous history of poor work (R. 100; 307, 407). McCart gave testimony, which was credited by the Examiner and the Board, that any deficiencies in her work were due to the poor condition of her machine, which required frequent repairs; that respondent was aware of this fact; and that she had never been criticized about her work (R. 99; 346–351).

(*c*) *Pearl Coker.*—Pearl Coker joined the Union during the organizing drive and attended two union meetings, including the meeting held on January 9, 1958 (R. 103; 335). On January 10, she told supervisor Higgins that she had attended the latter meeting, and Higgins replied that it had been announced at a supervisors' meeting that respondent would close the plant rather than operate with a union (R. 76; 336–337). Scharff indicated to McCart that he knew that Coker had attended the meeting and that he regarded her as one of the leading supporters of the Union (R. 100; 463). The day following this statement, Scharff discharged Coker, telling her that, although her work

[10] At the hearing before the Trial Examiner, Scharff admitted his interrogation of McCart and his reference to the other employees, but asserted that he was merely attempting to "reassure" McCart that it was not her participation in union activities that had caused her discharge. The Trial Examiner did not credit this explanation. (R. 73–74, 100; 462.)

was "nice," she was not earning enough (R. 103; 337). Coker suggested that she be transferred to another operation, but Scharff declined to do so (R. 103; 338).

Respondent's witnesses testified that Coker was discharged because the quality of her work was poor and she was the slowest worker in her section (R. 103–104; 308, 416–417). Coker, whose testimony was credited by the Trial Examiner and the Board, stated that, prior to her discharge, no one had told her that she was not doing enough work (R. 103; 338). Superintendent Prosterman conceded on cross-examination that her quality had "improved" and that for the last two months she had been doing satisfactory work (R. 104; 452–453). Moreover, Coker was discharged in the middle of the work week and more than two and one-half weeks before her alleged replacement reported for work (R. 106; Resp. Exh. 433). Another employee in the same section, Mary Lou Partain, was retained even though she was at least as slow as Coker (R. 105; 444–445). In October 1958, after the Union's drive had ended, Coker was rehired for the same work she had performed prior to her discharge (R. 103; 338–339).

(*d*) *Ruth Brooks.*—Ruth Brooks joined the Union in the latter part of November 1957, and attended all of the union meetings, including the one held on January 9, 1958 (R. 112; 386). Scharff admitted that he knew of Brooks' interest in the Union, and had named her as one of those whom he considered to be active in the union drive (R. 112; 353–354, 462–463). Brooks was discharged on January 16, the day following Coker's discharge (R. 109; 387). Hughley, the superintendent of her division, told Brooks that

she did not produce enough. Brooks replied that the real reason was not production but her union activity. Hughley did not deny the accusation, but, instead, replied, "Well, you girls are paying too much attention to this guy from the North [the union organizer] giving you the piece rates on your job, and we cannot afford those rates that they pay up there." (R. 109; 387–388.)

Although Brooks failed to meet the production standard established by the Company, this failure was attributable primarily to the fact that she was required to make repairs on the work of other employees (R. 109–110; 384, 711). Moreover, her production matched that of the three other employees in her section (R. 109; G.C. Exh. 52a–c, 62a–c, 68a–c). Brooks discussed her failure to meet the standard with both Superintendent Hughley and Supervisor Atha, and they had told her not to be concerned about it (R. 109; 117–118, 711).

3. *The layoff of nine employees named by the Union as members of its organizing committee.*—On January 18, 1958, the Union, in an apparent effort to protect the remaining pro-union employees, sent respondent a letter in which it identified twelve employees as members of the Union's volunteer organizing committee, and stated that they had been informed of their rights under the Act to engage in self-organization (R. 113; 472–473). Morris Scharff immediately interrogated every employee named in the letter who was present and working in the coat plant (R. 114; 299, 304–305, 342–343, 360, 366, 374–375, 389, 398, 472). In each case he asked

the employee if she had authorized the Union to use her name. When the employee answered in the affirmative, Scharff placed a check mark beside her name. In some cases Scharff asked whether the employee would withdraw her name from the letter, and warned her of possible adverse consequences if she refused. Employee Ida Harper testified that Scharff "* * * asked me if I wanted to stay on there and I told him, 'Yes.' He said, 'You know what this leads up to.' And put a check mark by my name and walked out" (R. 138; 366). Pauline McGee testified that, after she acknowledged she had permitted the Union to use her name on the letter, Scharff said to her, "'Do you know what this means?' and I said 'Yes sir,' and he said 'Well, all right then'" (R. 141; 305). When Frances Johnson[11] admitted consent to the Union's use of her name, Scharff said, "'Well, if that's the way you want it" (R. 134; 299). Evelyn Hudson testified that, when Scarff showed her the letter, he stated, "'Do you realize Evelyn, that this could work a hardship on you?' And I told him, 'Yes,' that I did. And he said * * * 'Do you want to leave your name on this letter?' I told him, 'Yes.' And he * * * put a check mark by my name and walked away" (R. 126; 398). Scharff then posted the letter with the check marks on the Company bulletin board (R. 114; 397–398, 472).

In the next two weeks, the Company laid off 16 of the 105 employees in the coat plant and several

[11] Sometimes referred to as "Frances Powell," her married name (R. 133).

employees in the pants factory. Of the sixteen in the coat plant, eight were listed in the Union's letter—Harper, McGee, Johnson, Hudson, Wood, Violet Ewing, Hamilton and Hood; the only pants factory employee on the union list, Lela Beaver, was also laid off (R. 114–115, 120, 125, 128, 130, 133, 137, 143, 149; 472).[12]

Prosterman and Scharff testified that the layoff was required because of a cutback in production requirements, and that it had been contemplated as early as December 1957 (R. 113; 443). Prosterman further testified that, in selecting employees for layoff, the Company applied four criteria, in the following order of importance: quality of workmanship, quantity of production, versatility and seniority (R. 116; 402, 449). But subsequently, he and Scharff indicated that the criteria were used interchangeably depending upon the nature of the operation involved (R. 116; 449, 698–699). The reasons assigned for the layoff of the nine employees listed in the Union's letter varied with each employe.

(*a*) *Lela Beaver.*—Lela Beaver was hired for work in the Company's pants division in mid-September 1957 (R. 116; 389). She was frequently so far ahead on her production that she was put on other operations (R. 118; 389). Beaver testified, without con-

[12] Only three employees named in the Union's letter were not laid off. These were Jeanette Beaver, who did not fully affirm her adherence to the letter when questioned by Scharff; Lucy Brooks, who was not questioned because she was absent; and Mary Lou Partain, who was scheduled for layoff but was retained because respondent changed its mind (R. 256, n. 8, 114; 472, 718).

tradiction, that pants division Superintendent Hughley told her that he liked her work and was pleased with her rate of production (R. 116; 389).

Beaver was the only pants division employee named as a member of the organizing committee in the Union's letter of January 18 (R. 116; 472). She was laid off a week thereafter on January 24 (R. 113; 391). According to Beaver's credited testimony, when she asked Hughley why she had been laid off, he told her that he did not know and that she would have to ask Scharff (R. 117; 391). Beaver called Scharff that afternoon, and he, too, stated that he did not know why she was being laid off and told her to contact him later (R. 117; 392). The following week, Beaver further testified, she went to Scharff's office again and told him that she believed her discharge was connected with her union activities. Scharff asked her how she had ever got mixed up with the Union, and added that, if the Union came in, "he would go out the back door." (R. 117; 393.)

At the hearing before the Trial Examiner, Supervisor Edna Atha stated that Beaver was selected for layoff because she was slow to train and that the Company concluded that it would be better to retain the services of an employee who could both set flies and tack belt loops (R. 117; 432, 647).[13] Similarly, Morris Scharff testified that he had made the decision to lay off Beaver, and that his reason for selecting her was

[13] Beaver allegedly could only perform the former operation.

that she was slow to learn and in his opinion not capable of performing two operations (R. 119; 470).[14]

(*b*) *Nellie R. Wood.*—Nellie Wood had ten years' experience in the garment industry when she was hired by respondent in early August 1957 (R. 120; 370). Her work involved the performance of two sewing operations (R. 120; 412). She testified without contradiction that both Scharff and Prosterman commented favorably on her work, and that she had received a raise as recently as two weeks prior to her layoff (R. 120; 373–374).

Wood joined the Union during the organizing drive, and attended all of its public meetings as well as those held at the homes of fellow-employees (R. 120–121; 373). She also solicited other employees to join the Union (R. 131; 373). She was listed in the Union's letter as a member of the organizing committee, and told Scharff, when interrogated by him, that she wanted her name "to stay on" the list, even though he had asked whether she "knew the consequences" (R. 121; 374–375).

Prosterman testified that, although Wood was a satisfactory worker, she was selected for layoff because she had less seniority than two other employees in her section (R. 121; 659–660).[15] Scharff conceded that she

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[14] On April 15, 1958, however, several months after Beaver's layoff but prior to the hearing, Scharff wrote his attorney that he did not know why Mrs. Beaver was laid off but assumed it was because she was an inefficient operator (R. 119; 479).

[15] The seniority advantage was negligible—only about three weeks. Furthermore, Wood could perform more operations, and her production record was higher, than at least one of the retained employees (R. 121–122; 455–456; G.C. Exh. 32a, 58a).

was not selected for layoff because of any criticism of her work (R. 123; 467).[16]

About mid-June 1958, Wood went to see Scharff about reemployment, and told him that she was sorry she had signed an unfair labor practice charge against the Company (R. 124; 375). Scharff suggested that she wait and speak to a Board agent who happened to be coming to the plant that day. In Scharff's presence, Wood told the agent that she wanted to withdraw her charge.[17] Several days thereafter, respondent rehired Wood (R. 124; 548–551).

(*c*) *Evelyn Hudson.*—Evelyn Hudson had about nine years' experience in the needle trades when she was hired by respondent in June 1957. She was assigned to an operation, known as tacking and turning sleeves, in respondent's sleeve section (R. 125; 395). In addition, she was sometimes assigned to other operations in the section, being able to perform them all except for the actual sewing of sleeves (R. 125–126; 395–396). Hudson testified, without contradiction, that both the quality and quantity of her work were satisfactory (R. 125; 396). This is borne out by respondent's records which show that she consistently met her work quota (R. 125; G.C. Exh. 57a).

Hudson joined the Union in November 1957, and attended all of the Union's public meetings (R. 126;

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[16] Prior to the hearing, however, Scharff had written his attorney that inferior quality was the reason for Wood's layoff (R. 123; 720).

[17] The Board has nevertheless provided a remedy for the unfair labor practices against Wood (see R. 125, n. 57). The charges here were filed by the Union and not by the individual employees (R. 124, n. 55).

397). She was also named in the Union's letter as a member of the organizing committee (R. 125; 472). When Scharff interrogated her with respect to the letter, she affirmed her support of the Union. Thereupon, according to her credited testimony, Scharff said, "Do you realize, Evelyn, that this could work a hardship on you?" (R. 126; 398).

Plant Superintendent Prosterman testified that Hudson was selected for layoff because her job was the most mechanical in the section and that, in order to keep training costs down, he had decided to lay off Hudson and divide her work among two other employees (R. 127; 442–443). But, Hudson had already demonstrated her ability to perform the operation handled by both employees who were retained, whereas neither of them had performed more than a single operation, and therefore lacked Hudson's range of experience (R. 127; 424, 442–443, 712).

(*d*) *Violet Ewing.*—Violet Ewing had about two years' experience in the garment industry when hired by respondent in June 1957 (R. 128; 340). Prior to receiving a regular assignment, she worked on a variety of sewing jobs in the plant and obtained experience in several operations (R. 128; 708). According to her credited testimony, her work was not criticized as to either quality or quantity (R. 128; 340).

Ewing joined the Union in November 1957, and attended all of its public meetings (R. 128; 341). Her home was used on one occasion as a union meeting place (R. 121; 373). Her sister-in-law, Supervisor Myrtle Ewing, warned her that Scharff had said

that, "he didn't care how good an operator a girl was, * * * he would fire her if he found out she had joined the Union" (R. 77; 342), and, when Scharff asked Violet Ewing whether she had authorized the Union to use her name in its letter, she affirmed her support of the Union (R. 128; 342).

Prosterman testified that he selected Ewing for layoff because her operation was less difficult to perform than that performed by Margaret Britt, whom he retained (R. 129; 313–314). Ewing had greater seniority than Britt, however, and Prosterman conceded that Ewing's production was better (R. 128–129; 314, 454). Moreover, when Britt took Ewing's job, Britt's job was given to a girl named Madeline who had previously done odd jobs in another section (R. 129; 314–315, 439). No attempt was made to compare Ewing's capabilities with those of Madeline (R. 129; 439). Ewing was eventually rehired on October 7, 1958; Prosterman then told her supervisor that she was a "good operator" who "would not give * * * any trouble" (R. 129; 708).

(*c*) *Bonnie Hamilton.*—Bonnie Hamilton was hired by respondent in July 1957 (R. 130; 355). Her regular assignment was sewing pockets, but she also performed several other operations when occasion demanded (R. 130; 357). Her immediate supervisor, Gerald Carter, as well as Prosterman and Scharff, testified that her work was satisfactory (R. 130; 310, 427, 467). She always met her production quota (R. 130; 355–356).

Hamilton joined the Union during the organizing campaign and attended both the public union meet-

ings and those at the employees' homes (R. 130; 360, 709–710). She was also listed as a member of the Union's organizing committee in its letter to the Company (R. 130; 472). Scharff asked her if her name belonged on the letter, and, when she replied that it did, he commented "well all right," and placed a check mark beside her name (R. 130; 360).

Prosterman testified that Hamilton was laid off because Lucille Yancey,[18] who performed the same operation as Hamilton, "had a greater potential and was a better operator" (R. 131; 310). Employee Nellie Hood (see *infra,* pp. 21–22) testified, however, that Supervisor Carter frequently instructed her to give Yancey's work to Hamilton for repair, stating as he did, "This is some more of Lucille's sorry doings" (R. 131; 382, 555–556). Hood also testified that Carter had never, in her presence, been critical of Hamilton's work (R. 131; 555–556).

(*f*) *Frances Johnson Powell.*—Frances Johnson Powell (hereinafter called Johnson) was hired by the respondent in July 1957 (R. 133; 706–707). At the time of her layoff, she was working in the lining section, and had just received a wage increase (R. 133; 296, 707). Johnson testified that she had never been criticized about her work (R. 133; 297).

Johnson signed a union card, and was also named as a member of the organizing committee in the Union's letter of January 18 (R. 133–134; 297, 472). Scharff interrogated her with respect to the Union's

[18] This is not the same Yancey whose discriminatory discharge has already been discussed (*supra,* pp. 5–7), but another employee by the same name.

use of her name on the letter, and, when she stated that she had authorized it, he said, "Well, if that's the way you want it," and placed a check mark beside her name (R. 134; 299).

At the hearing, Prosterman testified that Johnson was selected for layoff because she was the least competent employee in her section (R. 134; 441–442). He admitted, however, that he had given her a raise in pay, had never criticized the quality of her work, and, indeed, had complimented her work (R. 135; 296, 446–447). Scharff testified that Johnson's work was satisfactory as far as he was concerned and that she was proceeding fairly well in her new duties in the lining section; she was laid off because her work could be absorbed by two other employees (R. 136; 464, 719).[19]

Annie Brooks, an employee who worked in the same section and was retained in preference to Johnson, was discharged shortly after Johnson's layoff (R. 319–320; 715). Prosterman conceded that Brooks had given respondent "fairly constant" trouble with respect to both the quality and quantity of work (R. 136; 715).

(*g*) *Ida Harper.*—Ida Harper was hired by respondent in July 1957 (R. 137; 361). She was assigned to a Lewis blind stitching machine, which is more difficult to operate than the conventional sewing machine (R. 137; 362, 455). When the machine was operating properly and there was sufficient work to do, Harper could stitch as many as 80 to 90 garments

[19] Prior to the hearing, however, Scharff had written his attorney that Johnson was selected for layoff because her work had shown no improvement (R. 136; 720).

an hour (R. 136; 369). However, the machine frequently broke down, and there were periods when there was not enough work to do (R. 137; 362–363). On these occasions, she was assigned inspection work, or told by her supervisor to take time out (R. 137; 362). Harper testified that she had never been told that her work was unsatisfactory (R. 137; 364).

Harper joined the Union, attended a union meeting, and was also a member of the Union's organizing committee (R. 138; 364–365, 472). Scharff questioned her about the use of her name in the Union's letter, and she acknowledged that she had authorized its use. Thereupon, Scharff stated, "You know what this leads up to," placed a check mark beside her name and walked away. (R. 138; 366.)

At the hearing, Prosterman asserted that Harper had a bad make-up record, did not "take kindly" to her supervisor's request for increased production, and had other deficiencies (R. 138; 317–318). Supervisor Ewing also testified that Harper's work was bad (R. 141; 407–408). Ewing later conceded that her discussions with Harper were not "so much [about] bad work, it was just a lack of work" (R. 141; 411). Moreover, Prosterman admitted that Harper was capable of doing rapid work (R. 139; 515), and that, prior to laying her off, he did not compare her performance to that of the replacement employee, whose production record was no better and who had less experience and seniority (R. 143; 715; G.C. Exh. 48a–b).

(*h*) *Pauline McGee.*—Pauline McGee was hired by respondent in August 1957, and assigned to an operation involving two sewing procedures (R. 144; 301–

302). She testified that no supervisor ever criticized either the quality or quantity of her work, and that Prosterman had told her she was doing "fine" (R. 144; 302).

McGee signed a union card, attended two of the Union's public meetings, and solicited other employees to join (R. 144; 303). After the first meeting, she was warned by Supervisor Myrtle Ewing that, "if you don't want to dig your own grave, you had better shut up talking about the Union" (R. 76–77; 304). On being named in the Union's letter as a member of its organizing committee, McGee was interrogated by Scharff, who, when she affirmed the Union's action, replied, "Do you know what this means?" (R. 144; 305).

Plant Superintendent Prosterman testified that he selected McGee for layoff because she was doing a job similar to that performed by another employee, Charlotte Finley, who showed greater potential, and had more seniority (R. 144–145). Although both employees used the same kind of machine, McGee performed an additional operation (R. 144; 311–312). Moreover, Finley required additional training and the help of another employee in order to perform McGee's job, and then attained a production level which was substantially below McGee's level (R. 145–146; 437–438).

(*i*) *Nellie Hood.*—Nelli Hood was hired by the respondent in July 1957. Her principal job was to mark and match various coat parts and to carry bundles to the operators (R. 149; 710). None of respondent's

supervisors or officials ever told her that her work was unsatisfactory, and she was given a pay raise several months after she was hired (R. 149; 378–379).

Hood was a member of the Union, and was named by the Union as a member of its organizing committee (R. 149; 386, 472). She also spoke favorably about the Union to other employees (R. 149; Tr. 529). When Scharff interrogated her with respect to the listing of her name as a member of the organizing committee, Hood affirmed her support of the Union. Scharff replied "all right" and placed a check mark beside her name (R. 149–150; 381).

Prosterman testified that Hood was selected for layoff because her work was of an unskilled nature and could readily be absorbed by other employees (R. 150; 658–659). But there was no effort to compare Hood's work with that of other employees who also performed unskilled work and were retained. Hood had greater seniority than other unskilled employees, including the employee who assumed most of Hood's duties after her layoff (R. 150; Resp. Exh. 9).

B. THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing evidence, the Board [20] found that respondent—by its acts of surveillance, interrogation, and threats of economic reprisal—had interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7, and had thereby violated Section 8(a)(1) of the Act.

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[20] The Board, in all material respects, agreed with and accepted the Trial Examiner's findings and conclusions (R. 252, 257–260).

The Board further found that respondent had discharged Yancey, McCart, Coker and Brooks, and had laid off the nine other employees, because of their union membership and activity, and had thereby violated Section 8(a) (3) and (1) of the Act (R. 252–261).

The Board ordered respondent to cease and desist from the unfair labor practices found, to reinstate and make whole those employees against whom respondent had discriminated, and to post appropriate notices (R. 261–264).

C. THE DECISION OF THE COURT OF APPEALS

The court below—except in two respects[21]—sustained the Board's findings of interference, coercion and restraint, and enforced the order of the Board in respect to those violations. The court, however, concluded that the Board's findings that the discharges and layoffs were discriminatorily motivated were not supported by substantial evidence, and therefore refused enforcement of the Board's order insofar as it related to those violations (R. 725, 730–731, 733). The court accused the Trial Examiner of having drawn "questionable inferences" and of having "uniformly credited all of the General Counsel's evidence and generally disbelieved all of the employer's evidence" (R. 726). The court thereupon concluded that "[t]here was much evidence for the Respondents that the work of the discharged employees was

[21] The court set aside the Board's findings that Scharff's speech (*supra*, pp. 4–5) violated Section 8(a)(1) (R. 723–724). It also rejected the finding that Scharff's interrogation of the employees named by the Union in its letter (*supra*, pp. 10–11) violated that section (R. 731).

unsatisfactory and that this was the sole reason for the discharges" (R. 728), and that "[t]he Respondents' management assigned plausible and reasonable grounds for the selection of each of those who were laid off" (R. 732). In so concluding, the court further stated (R. 732) that "the Board placed its own evaluations upon the factual situations, assumed managerial prerogatives, and reached the conclusions that good business judgment would not have justified the Respondents in their selections for layoffs * * *."[22]

SUMMARY OF ARGUMENT

I

A. Section 10(e) of the National Labor Relations Act provides that, when a court of appeals reviews a Board unfair labor practice order, the "findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." In *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 488, the Court held that this standard does not mean that "a court may displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo.*"

B. The court below has previously adhered to the view that in discriminatory discharge cases, which entail a back pay remedy, a higher standard of proof

[22] The conflicting analyses by the Board and by the court of the evidence with respect to each of the employees are discussed in greater detail in the Argument, *infra*, pp. 38–50.

is required than in cases involving employer interference with union activity, where the only remedy authorized by the Act is a cease-and-desist order. Because of this view, the court has formulated a special rule for guidance in choosing between two inconsistent inferences to be drawn from the record evidence in a discriminatory discharge case, *i.e.*, that the employer's testimony that an employee was discharged for cause must be accepted if the reason assigned is a credible one and if there has been no direct contradiction of such testimony. *National Labor Relations Board* v. *Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 438–439 (C.A. 5). Section 10(e) of the Act, however, draws no such distinction between discriminatory discharge cases and other types of unfair labor practice cases, but provides simply that the Board's unfair labor practice findings shall be sustained by a reviewing court if supported "by substantial evidence on the record considered as a whole." The practical effect of the principle applied by the court below is to deny the Board power to find adversely to an employer upon evidence supporting either of two inconsistent inferences. This is contrary to the explicit holding in *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105.

Under proper application of the correct standard, the reviewing court may not set aside the Board's conclusion that union activity was the motive for a discharge, where there is evidence which would warrant the inference that a discharge was for union activity, and the Board, after full and fair consideration of the grounds advanced by the employer, has

shown a rational basis for rejecting them as the motivating factor.

II

A. In the present case, the Board found that respondent discharged employees Yancey, McCart, Coker and Brooks because of their union activities, and not for cause as respondent asserted. The Board, *inter alia*, relied on the circumstances that (1) the discharges occurred in the midst of an intensive campaign by respondent to defeat the Union through surveillance of union organizers, interrogation of employees and threats; (2) respondent's officials indicated that they regarded the employees involved as active on behalf of the Union; (3) the reasons advanced by respondent for the discharges were contradictory and did not stand up under scrutiny; and (4) in the case of at least two of the employees (Yancey and Brooks), there was direct evidence that union activity was indeed the reason for the discharge. There was also evidence that the employees were not in all respects "perfect" workers, which could have afforded cause for their discharge. The Board concluded, however, that, in all the circumstances, the more reasonable inference was that the employees' union activities, rather than their work deficiencies, motivated respondent's action.

The inference drawn by the Board was clearly a permissible one on the facts in the record here. Accordingly, under the principles of *Universal Camera, supra*, the Board's conclusions should have been allowed to stand. Instead, the court below, choosing to rely on the evidence showing defects in the employees'

work, upset the Board's inferences and found that the employees were discharged for cause. In so doing, it improperly substituted its judgment for that of the Board on a matter committed to the Board's discretion.

B. The court below also exceeded its reviewing function under the Act in setting aside the Board's further finding that respondent laid off nine other employees because of their union activities. The Board's finding rested, *inter alia*, on the circumstances that (1) the nine employees were listed by the Union as members of its organizing committee; (2) the layoffs occurred after the respondent verified that they were on the committee, attempted unsuccessfully to persuade them to withdraw, and delivered veiled warnings of the consequences if they did not; and (3) as in the case of the four dischargees, the reasons assigned by respondent for selecting the nine employees for layoff did not stand up under scrutiny. Since, in the light of these factors, the Board's inference of anti-union motivation for the layoffs was reasonable, the court below should have permitted it to stand. But, as with the four dischargees, the court, finding that the grounds assigned by respondent for selecting the nine employees were "plausible and reasonable," substituted its judgment for that of the Board and concluded that the selection was based on valid considerations.

ARGUMENT

I

A REVIEWING COURT MAY NOT DISPLACE THE BOARD'S FACTUAL CHOICE BETWEEN TWO CONFLICTING VIEWS IF THE CHOICE IS SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE

A. THE STANDARD OF REVIEW WITH RESPECT TO THE BOARD'S FINDINGS OF FACT

Section 10(e) of the National Labor Relations Act provides that, when a court of appeals reviews an unfair labor practice order, the "findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." In *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 488, the Court held that the standard embodied in Section 10(e) permits a reviewing court to set aside "a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view." The Court added, however, that (*ibid.*, emphasis added):

> * * * [T]he requirement for canvassing "the whole record" * * * was [not] intended to negative the function of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect. *Nor does it mean that even as to matters not requiring expertise a court may displace the*

> *Board's choice between two fairly conflicting views,* even though the court would justifiably have made a different choice had the matter been before it *de novo.*[23]

Thus, Congress has entrusted to the Board the task of making determinations of credibility and of weighing the conflicting inferences, and its resolution of the conflict is final as long as it is "supported by substantial evidence on the record considered as a whole." Insofar as the Board has credited certain testimony and discredited other testimony, a reviewing court must accept the credited testimony as establishing the underlying facts unless such testimony is plainly improbable or is contradicted by other reliable evidence, or unless an improper basis was used for determining credibility.[24] Insofar as the credited testimony will support conflicting inferences, the inference drawn by

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[23] In this respect, *Universal Camera* reaffirmed a principle which had been enunciated under the earlier Wagner Act. In *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 597, the Court pointed out that "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts * * *. The Board, like other expert agencies dealing with specialized fields * * * has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." In *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106, the Court stated: "The possibility of drawing either of two inconsistent inferences from the evidence did not prevent the Board from drawing one of them * * *." See, also, *Radio Officers' Union* v. *National Labor Relations Board*, 347 U.S. 17, 48–50.

[24] See *National Labor Relations Board* v. *Dinion Coil Co.*, 201 F. 2d 484 (C.A. 2); Board Brief in *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, No. 94, this Term, pp. 19–22.

the Board must stand if reasonable "when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view"—even though the court would have "made a different choice had the matter been before it *de novo*" (*Universal Camera, supra,* 340 U.S. at 488).

Congress has restricted judicial review of Board findings of fact for two basic reasons. First, resolutions of credibility depend to a great extent on the witnesses' demeanor, which the officer who presided at the hearing (the Board Trial Examiner) is best qualified to evaluate. Second, if the reviewing court were free to find the facts *de novo* or to reweigh the inferences drawn by the Board, it would defeat "the intention of Congress to apply an orderly, informed and specialized procedure to the complex administrative problems arising in the solution of industrial disputes." *National Labor Relations Board* v. *Waterman Steamship Corp.,* 309 U.S. 206, 208. The drawing of inferences involves the application of the lesson of experience. The determination whether discharges or layoffs were prompted by an employer's anti-union attitude or by an employee's work deficiencies ordinarily requires the application of the Board's cumulative insight to the resolution of difficult, and often close, factual issues. The resolution of those issues is, therefore, precisely the kind of question that Congress committed to the Board's expert judgment with only limited judicial review.

B. THE STANDARD OF REVIEW IS THE SAME FOR DISCRIMINATORY DISCHARGE CASES AS IT IS FOR OTHER TYPES OF UNFAIR LABOR PRACTICES

1. The court below has adhered to the erroneous view (see *infra*, pp. 34–37) that in discriminatory discharge cases, which entail a back pay remedy, a higher standard of proof is required than in cases involving employer interference with union activity, where the only remedy authorized by the Act is a cease-and-desist order.[25] The court first expressed this view in *National Labor Relations Board* v. *Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433 (C.A. 5), where, in summarily enforcing the Board's findings of interference and restraint in violation of Section 8(a)(1) while setting aside most of the findings of discriminatory discharge, it stated (*id.* at 438):

> It is quite easy for management to freely recognize and sincerely and openly acknowledge the right to self-organization established by the Act; a cease and desist order on this point costs no money and only warns to observe a right which already existed; evidence short of demonstration may easily justify such an order.
>
> Orders for reinstatement of employees with back pay are somewhat different. They may impoverish or break an employer, and while they are not in law penal orders, they are in the nature of penalties for the infraction of

[25] The court's misapplication of the substantial evidence standard of review has not been confined to discriminatory discharge cases alone, however. See *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, No. 94, this Term; *National Labor Relations Board* v. *Fant Milling Co.*, 360 U.S. 301, 309, n. 10.

> law.[26] The evidence to justify them ought therefore to be substantial, and surmise or suspicion, even though reasonable, is not enough * * *.

Because of this view, the Fifth Circuit in *Tex-O-Kan* (122 F. 2d at 438–439) formulated a special rule for guidance in choosing between two inconsistent inferences to be drawn from the record evidence in a discriminatory discharge case, *i.e.*, that the employer's testimony that the employee was discharged for cause must be accepted if the reason assigned is a credible one and there has been no direct contradiction of such testimony. The Board may not draw the inference that the discharge was for union activity, even though the latter inference was also reasonable and the Board had judged that reason stronger under the circumstances. Nor, indeed, may the Board discredit the employer's testimony unless it is specifically contradicted by other testimony.[27]

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[26] The Fifth Circuit itself recognized at an early date, however, that a back pay remedy is not penal and does not vindicate private rights, but that, like a cease-and-desist order, it is issued to redress a "public" wrong. *Agwilines* v. *National Labor Relations Board*, 87 F. 2d 146, 150-151 (C.A. 5).

[27] "There is no doubt that each employee here making complaint was discharged, or if laid off was not reemployed, and that he was at the time a member of the union. In each case such membership may have been the cause, for the union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge; it is a

Since *Tex-O-Kan*, the Fifth Circuit has continued to adhere to its view of discriminatory discharge cases.[27] Although the court readily enforces a cease-and-desist order directed against employer interference and restraint in violation of Section 8(a)(1) of the Act, it continues to overturn the Board's findings of discriminatory discharge if the employer can point to some incident or shortcoming on the part of the employee which *might* have been cause for the discharge; in fact, the court appears to follow this course without regard to the strength of the inference of anti-union motivation to be derived from admissions, the employer's knowledge of the em-

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fact to which he may swear. If he says it was not union membership or activity, or something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts they must be inconsistent with the positive sworn evidence on the exact point. This was squarely ruled as to a jury in *Pennsylvania R.R. Co.* v. *Chamberlain*, 288 U.S. 333 * * *, and the ruling is applicable to the Board as fact-finder * * *" (122 F. 2d at 438–439).

[28] See *National Labor Relations Board* v. *Houston Chronicle Publishing Co.*, 211 F. 2d 848, 853–854 (C.A. 5); *National Labor Relations Board* v. *Huber & Huber Motor Express, Inc.*, 223 F. 2d 748, 749 (C.A. 5); *National Labor Relations Board* v. *Rutter-Rex Mfg. Co.*, 229 F. 2d 816, 819 (C.A. 5); *National Labor Relations Board* v. *Ingram*, 273 F. 2d 670, 673 (C.A. 5).

[29] See *National Labor Relations Board* v. *McGahey*, 233 F. 2d 406 (C.A. 5). But cf. *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, 288 F. 2d 630, 638–639 (C.A. 5), certiorari granted, No. 94, this Term.

ployee's union activities, or the proof of other unfair labor practices (see Pet. 14, 16–17).[30]

2. Section 10(e) of the Act draws no distinction between discriminatory discharge cases and other types of unfair labor practice cases; and it imposes no re-

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[30] The most recent example of the Fifth Circuit's practice in this regard is *Frosty Morn Meats, Inc.* v. *National Labor Relations Board*, No. 18,464, decided November 30, 1961, 49 LRRM 2159. There the record showed that employee Judkins, who was a leader in the union movement, was discharged after Plant Manager Camp had warned that the plant would be shut down if the union came in and had threatened to fire Judkins if Camp learned that Judkins was a union adherent. The court accepted this evidence, sustained the Board's finding that the threats violated Section 8(a)(1), and conceded that these circumstances would "support an inference that Judkins's discharge was in response to his union leadership" (49 LRRM at 2162). Nevertheless, finding evidence that would have afforded good cause for his discharge, the court declined to sustain the Board's finding that Judkins was discharged because of his union activity. The Court reasoned as follows (49 LRRM at 2162–2163): "If * * * the misdeeds of the employee are so flagrant that he would almost certainly be fired anyway there is no room for discrimination to play a part. The employee will not have been harmed by the employer's union animus, and neither he nor any others will be discouraged from membership in a union since all will understand that the employee would have been fired."

Compare, in contrast, the approach of the Eighth Circuit in *National Labor Relations Board* v. *Des Moines Foods, Inc.*, No. 16,694, decided November 29, 1961, slip op. 9: "We think that the most that can be claimed by the respondent is that the evidence is consistent with the hypothesis that Mrs. Hay was discharged because of her activities on behalf of the Union and with the hypothesis that she was discharged for misconduct. The Supreme Court, in *National Labor Relations Board* v. *Nevada Consolidated Cooper Corp.*, 316 U.S. 105, 106, has said: 'The possibility of drawing either of two inconsistent inferences from the evidence did not prevent the Board from drawing one of them * * *.'"

quirement that, in discriminatory discharge cases, an employer's credible explanation of the reasons for discharge must be accepted unless directly contradicted. It provides simply that the Board's unfair labor practice findings shall be sustained by the reviewing court if supported "by substantial evidence on the record considered as a whole." This Court made plain in *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105—a discriminatory discharge case decided after *Tex-O-Kan*—that the "substantial evidence" standard does not deny to the Board the power to find adversely to the employer upon evidence supporting either of two inconsistent inferences.[31] The view that a witness' testimony cannot be discredited unless directly contradicted overlooks the fact that the witness' demeanor when he testifies may itself be sufficient to "satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story * * *." L. Hand, J., in *Dyer* v. *MacDougall*, 201 F. 2d 265, 269 (C.A. 2).[32]

In the present case, the Board found that the employer discharged and laid off certain employees for union activities rather than for cause, as the employer contended. The question of the employer's true motive is one of fact. There are often conflicts in the testimony and "direct evidence of a purpose to violate the

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[31] As *Universal Camera* recognizes, this principle was not altered by the 1947 amendments to the Act (see *supra*, pp. 28–29).

[32] See, also, *National Labor Relations Board* v. *Howell Chevrolet Co.*, 204 F. 2d 79, 86 (C.A. 9), affirmed, 346 U.S. 482. Board Brief in *National Labor Relations Board* v. *Florida Citrus Cooperative Canners*, No. 94, this Term, pp. 19–20.

statute is rarely obtainable" (*Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. 2d 291, 293 (C.A. 4)). Accordingly, proof of motive usually requires the Board (as it did here) to determine the credibility of witnesses and to draw inferences from the credited testimony.[33]

Contrary to the Fifth Circuit's view (see R. 732–733; *National Labor Relations Board* v. *McGahey*, 233 F. 2d 406, 412–413 (C.A. 5)), when the Board does determine that the reason given by the employer was not the real motive for the employee's discharge, the Board does not interfere with "managerial prerogatives" and "good business judgment." In making an evaluation of the employer's reasons, the Board does not undertake to judge whether they are economically sound or otherwise prudent. The reasonableness of the cause assigned is assessed merely as an evidentiary factor bearing on the probability of whether it is the real cause. For example, if the reason given is not one for which discharges are ordinarily made, the testimony that it was the real cause does not carry the kind of persuasion to offset an inference of a discriminatory motive, flowing from other evidence, which a "good" cause would carry. In short, an employer may discharge for any reason—good or bad—unconnected with union or organizational activity, provided that the reason given was in fact the real reason; in this sense, the employer's managerial pre-

[33] This conclusion is also true with respect to the analogous problem of establishing that the employer has failed to bargain in good faith. That problem is presented in the related case, *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, No. 94, this Term.

rogatives and right to exercise his own business judgment are unaffected by the Act.[34] Where there is evidence which would warrant the inference that a discharge was for union activity, however, the fact that the grounds assigned by the employer are not plausible in the circumstances presented is relevant to the question of whether it or the union activity was the real reason for the discharge.[35] Once the Board, after full and fair consideration of the employer's defenses, shows rational grounds for rejecting them, the reviewing court may not set aside the Board's ultimate conclusion, based on substantial evidence, that the union activity was the motive for the discharge.

II

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDINGS THAT THE EMPLOYEES WERE DISCHARGED AND LAID OFF BECAUSE OF THEIR UNION ACTIVITIES

In the present case, the Fifth Circuit once again has adhered to the standard it enunciated in the *Tex-*

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[34] See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45.

[35] The foregoing analysis is not affected by the provision in Section 10(c) of the Act, added by the 1947 amendments, that no "order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged * * * if such individual was suspended or discharged for cause." The purpose of this provision is to emphasize that, if cause exists for the discharge of an employee, the Board cannot disregard it and find an anti-union motive merely because the employee also happened to be active on behalf of the union. However, the provision was not intended to deprive the Board of power to weigh the cause factor on the one hand, and the anti-union factor on the other, and determine which was the motivating force in the particular case. See *National Labor Relations Board* v. *Dixie Shirt Co.*, 176 F. 2d 969, 974 (C.A. 4).

O-Kan case, *supra,* and has upset the Board's findings of fact in a discriminatory discharge case where, on the basis of the entire record, the findings plainly were not irrational. The Board's inference that the discharges and layoffs were motivated by the employees' union activities was a permissible one on this record. Nevertheless, the court, by ignoring credited testimony and relying on disputed evidence of poor workmanship or low production which *might* have afforded the employer good cause for his action, concluded that the stronger inference was that the employees were discharged or laid off because of their deficiencies, and thereupon set aside the Board's findings. In short, contrary to the admonition in the *Universal Camera* case, *supra,* the court of appeals undertook to weigh the evidence *de novo,* and to substitute its judgment for that of the Board even though the Board's findings were reasonable.[36]

A. THE DISCHARGES

The discharges of employees Yancey, McCart, Coker and Brooks occurred in the midst of an intensive campaign by respondent to defeat the Union, not merely by expressing its opposition to the Union, but by such coercive measures as surveillance of union organizers, interrogation, and threats to employees—action which the court below agreed (R. 724–725) violated Section 8(a)(1) of the Act. This

[36] Similarly, in *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, No. 94, this Term, the court below undertook to set aside the Board's determination of the credibility of witnesses even though such determination was not irrational.

evidence of active hostility to the Union furnishes strong support for the Board's conclusion that the discharges were motivated by the same consideration.[37] An analysis of the evidence pertaining to the discharges confirms this conclusion.

1. Lucille Yancey, who was believed by the Trial Examiner and the Board,[38] testified that, the day after her discharge, Morris Scharff, respondent's principal operating official, told her that she was being discharged because he had heard that she and her husband had been "working with the union organizers," and that she could be reinstated only if the Union drive failed (see the Statement, *supra*, p. 6). Such direct evidence that union considerations motivated Yancey's discharge, by itself, negates the testimony of respondent's witnesses that Yancey was discharged because of poor work and an uncooperative attitude. These other explanations are further undermined by Yancey's credited testimony that she had never been criticized about her work prior to her discharge and that Plant Superintendent Prosterman, when he discharged her, had merely stated that there was not enough work (see the Statement, *supra*, pp. 6–7).

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[37] See *National Labor Relations Board* v. *Harris-Woodson Co.*, 162 F. 2d 97, 101 (C.A. 4); *Angwell Curtain Company* v. *National Labor Relations Board*, 192 F. 2d 899, 903 (C.A. 7).

[38] Here, unlike in *Florida Citrus*, No. 94, this Term, the Court did not purport to overturn any of the testimony which the trial examiner and the Board had specifically credited.

On the basis of these facts, the Board was not only reasonable, but manifestly correct, in finding that Yancey was discharged because of her union activity. The court below arrived at a contrary conclusion only by ignoring credited testimony, and by relying on an irrelevancy. Thus, the court, although referring to Yancey's conversation with Scharff (R. 728), omitted mention of the portion of her testimony in which she stated that Scharff had acknowledged that the discharge was attributable to her work on behalf of the Union and had conditioned her reemployment upon the defeat of the Union. Moreover, although the court concluded that Yancey was not very active in the union campaign (R. 729), that fact is immaterial, since Yancey's testimony showed that respondent believed she was "working with the union organizers."[39]

2. The evidentiary basis for the Board's findings respecting the other discharges is equally substantial, and the court's action in setting those findings aside was likewise unjustified.

(*a*) In the case of Grace McCart, the record shows (see the Statement, *supra*, pp. 7–8) that respondent discharged her the day after she attended a union meeting and signed a card. At the time of her discharge Superintendent Prosterman told her that her discharge was for bad work, but, when she later questioned Scharff about the reason for dismissal,

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[39] See *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 589–590; *National Labor Relations Board* v. *Ridge Tool Co.*, 211 F. 2d 88 (C.A. 6), enforcing, 102 NLRB 512, 513.

he asked whether she had attended a union meeting the night before. McCart admitted that she had, and accused Scharff of discharging her because of her union activity. Scharff continued his inquiry concerning the union meeting, asking McCart to name other employees who had attended. Since she was reluctant to do so, Scharff proceeded to list three employees whom he regarded as active on the Union's behalf. Although there was evidence that McCart had occasionally turned out garments which were improperly sewn, there was also evidence that the machine on which McCart worked required frequent repairs, that McCart had not been criticized about her work prior to her discharge, and that she was rehired to perform the same operation after the Company had defeated the Union. Weighing all of this evidence, the Board could well conclude, as it did, that union activity rather than poor performance was the reason for McCart's discharge.

(*b*) Pearl Coker (see the Statement, *supra*, pp. 8–9) was discharged the day after Scharff, in his interrogation of McCart, had named Coker as an active union supporter. Scharff told Coker that, while her work was "nice," she was not earning enough. There was evidence that Coker did not meet her production quota. On the other hand, Coker testified that she had not previously been warned about her work; Prosterman conceded that she had been improving; Coker's discharge occurred in the middle of the work week and more than two and one-half weeks before her alleged replacement reported for work; another employee in the same sec-

tion was retained though she was at least as slow as Coker; and Coker was rehired for the same work after the union drive had ended. Balancing the evidence of Coker's shortcoming against the timing of her discharge, the lack of any prior warning, and respondent's active hostility to the Union, the Board was not unreasonable in concluding that the inference that Coker was discharged because of her union activity was stronger than the inference that the discharge was attributable to her low production rate.[40]

(*c*) Ruth Brooks (see the Statement, *supra*, pp. 9-10) was discharged two days after Scharff had indicated, in his conversation with McCart, that he had regarded her, too, as strongly "pro-union" and active in the organizing effort. Her supervisor, Hughley, told her that low production was the reason for her discharge. But, when Brooks disputed this reason and accused Hughley of discharging her because of her union activities, Hughley replied, "Well, you girls are paying too much attention to this guy from the North [the union organizer] giving you the piece rates on your job, and we cannot afford those

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[40] See *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 589-590 (discharges without prior warning); *North Carolina Finishing Co.* v. *National Labor Relations Board*, 133 F. 2d 714, 717 (C.A. 4), certiorari denied, 320 U.S. 738 (retention of less efficient employees, and questioning of others concerning the discriminatee's union activities); *E. Anthony & Sons* v. *National Labor Relations Board*, 163 F. 2d 22, 26-27 (C.A.D.C.), certiorari denied, 332 U.S. 773 (summary discharges, without preliminary warning; discharges occurred right after the union was formed and against a background of employer hostility).

rates that they pay up there." Opposed to this evidence, which supports the inference that union activity was the reason for Brooks' discharge, was evidence showing that she did not meet her production quota. According to Brooks' uncontradicted testimony, however, she was constantly required to make repairs on other employees' work; she brought this fact to the attention of her supervisors; and they, in turn, had given her assurance that they were aware of her extra burden and that she did not have to worry about her production. Moreover, Brooks' production record matched that of the three other employees in her section, who did no extra repair work; none of these employees was discharged. On these facts, the Board was clearly warranted in concluding that the stronger inference was that Brooks was discharged because of her union activities.

The court below rejected the Board's conclusions with respect to McCart, Coker and Brooks because evidence existed that each employee was deficient in her work, and could properly have been discharged for this reason (R. 730–731). But whether the evidence of work deficiency was in fact the reason for the discharges requires an evaluation of that evidence in the light of the other evidence pointing to an anti-union motive for the discharges. Although "the discharge of an inefficient or insubordinate union member or organizer is lawful, it may become discriminatory if other circumstances reasonably indicate that the union activity weighed more heavily in the decision to fire him than did dissatisfaction with his performance." *National Labor Relations Board* v.

Whitin Machine Works, 204 F. 2d 883, 885 (C.A. 1). The court summarily dismissed the fact that respondent had rehired McCart and Coker (R. 730), and ignored and misinterpreted the evidence of respondent's anti-union motivation. Thus, in McCart's conversation with Scharff, the court concluded that, since it was McCart who asserted that she was discharged for union activity, this was merely "a self-serving" opinion entitled to no weight (R. 730). But this conclusion overlooks the fact that Scharff himself had opened the subject by asking McCart whether she had attended the union meeting the night before, and then had gone on to request her to name other employees who were there as well. In this context, it is fair to treat Scharff's actions as an admission that union activity was the real reason for McCart's discharge. Similarly, in the case of Coker, the court assumed that the only basis for concluding that union activity motivated the discharge was "respondent's unconceded animosity toward the union" (R. 730)—an assumption which ignores all of the other circumstances outlined above. And, in the case of Brooks, the court completely ignored, *inter alia*, Brooks' conversation with supervisor Hughley.

In any event, the function of weighing the conflicting inferences to be drawn from the evidence, is that of the Board and not of the reviewing court (see *supra*, pp. 29–30). The inferences drawn by the Board are not to be upset if reasonable, and those with respect to McCart, Coker, Brooks—as well as Yancey—clearly were permissible.

B. THE LAYOFFS

The layoffs of the nine employees occurred on the heels of the prior discharges for union activity and shortly after respondent received the Union's letter indicating that the Union was continuing its campaign. Scharff, in questioning the employees listed in the letter, had urged them to withdraw their support of the Union and had suggested that "hardship" would follow if they did not; and, of the employees laid off, an unusually high proportion of those listed in the union letter were included (see the Statement, *supra*, pp. 11-12).[11] These circumstances, coupled with respondent's extensive program of restraint and coercion in contravention of Section 8(a)(1), furnish ample support for the Board's inference that the selection of the nine members of the union committee for layoff was attributable to their union activity. See *National Labor Relations Board* v. *Carolina Mills*, 190 F. 2d 675, 676 (C.A. 4).

Although there was evidence that a layoff was economically justified, that it had been decided upon prior to receipt of the Union's letter,[12] and that in some instances and in some respects the ostensible

[11] As the Board pointed out (R. 114-115, 153, 256), the only pants plant employee on the union list was laid off, and the fifteen percent reduction in force in the coat plant encompassed eight out of eleven, or over seventy percent, of the union committee in that plant. See *National Labor Relations Board* v. *Sifers Candy Company*, 171 F. 2d 63, 65-66 (C.A. 10). As to the three employees in the union letter who were not laid off, see n. 12, *supra*, p. 12.

[12] There is no evidence that the Union knew that a layoff was contemplated at the time it sent its letter.

grounds asserted by respondent for the selection of the nine employees actually existed, in other instances and in other respects the ostensible grounds for the layoffs were disproved by evidence which the Board believed. Respondent's witnesses were often not consistent; the reasons which they gave at the hearing were contrary to the ones given to the employee at the time of the layoff; and respondent's explanation was, in any event, often negated by credited employee testimony.

For example, the reason assigned at the hearing for the discharge of Lela Beaver was that she was slow to train and could perform only one operation. Yet Beaver, whose testimony was credited, stated that her superintendent, Hughley, had praised her work and had put her on other operations; that, when he laid her off, Hughley gave no explanation but referred her to Scharff; and that Scharff, in turn, had asked her how she ever got mixed up with the Union (see the Statement, *supra,* pp. 12–14).

Nellie Wood was laid off even though it was conceded that she was a competent and experienced worker, who had just recently received a wage increase; she was allegedly selected because she had less seniority than two other employees. But the seniority advantage of the other two employees was negligible and Wood was a more versatile operator. Moreover, when, after her layoff, she told Scharff that she was sorry about signing an unfair labor practice charge against the Company and wanted to withdraw it, she was reemployed (see the Statement, *supra,* pp. 14–15).

Bonnie Hamilton also was admittedly a satisfactory worker who always met her production quota. She was selected for layoff allegedly because another employee who performed the same operation "had a greater potential and was a better operator." The work of the other employee had frequently been criticized, however, and Hamilton had been given the other employee's garments to repair (see the Statement, *supra*, pp. 17–18).

Frances Johnson was selected for layoff, according to Superintendent Prosterman, because she was the least competent employee in her section. But he later admitted that he had given her a raise in pay, had never criticized the quality of her work, and had, indeed, complimented her, and Scharff testified that Johnson's work was satisfactory as far as he was concerned, and that she was laid off because her work could be absorbed by two other employees (see the Statement, *supra*, pp. 18–19).

In short, the grounds assigned by respondent, especially since they were often inconsistent or impaired by other evidence,[43] were not so compelling as to override the evidence of anti-union motivation for the layoffs. Cf. *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502. It was therefore not unreasonable for the Board to conclude that, on balance, the stronger inference was that the nine employees were in fact selected for layoff, not for

[43] See *National Labor Relations Board* v. *Bird Machine Co.*, 161 F. 2d 589, 592 (C.A. 1); *National Labor Relations Board* v. *Dinion Coil Co.*, 201 F. 2d 484, 486 (C.A. 2); *National Labor Relations Board* v. *Radcliffe*, 211 F. 2d 309, 313–314 (C.A. 9).

the reasons given by respondent, but because they were on the Union's organizing committee.

Nor is a different conclusion required because of the considerations set forth by the court below. The court rejected the Board's finding of anti-union motivation for two reasons. The first reason was that "[t]he selection of the employees to be laid off had been determined before the union's warning had been delivered, if the witnesses for the Respondents are to be believed" (R. 732). But even the court observed that the respondent's witnesses "were not believed by the Examiner or the Board" (R. 732). Since the resolution of credibility is a task which is entrusted to the trier of fact—the Trial Examiner—because he has the "superior opportunity * * * to observe the demeanor of the witnesses" (*Motorola, Inc.* v. *National Labor Relations Board*, 199 F. 2d 82, 83 (C.A. 9), certiorari denied, 344 U.S. 913), the court was in no position to upset the Examiner's evaluation of the testimony and his resolution of credibility (see Board Brief in *National Labor Relations Board* v. *Florida Citrus Canners Cooperative*, No. 94, this Term, pp. 19–20).

The court itself attached little relevance to its first reason, for it rested its holding on the determination that "[t]he Respondents' management assigned plausible and reasonable grounds for the selection of each of those who were laid off" (R. 732). Even if this reason be assumed to be true, it does not follow that those grounds actually motivated respondent to select the nine employees in issue. At best the record merely shows that some of the employees had certain

shortcomings, while, as to other employees, there was a dispute as to their shortcomings, and that these shortcomings *might* have led to the selection of the nine employees for layoff. On the other hand there was strong evidence tending to show that the Company, which was strongly anti-union, selected the employees for layoff when it became aware of their union organizing activities. It was for the Board to determine what was in fact the true motive for the layoffs by considering each of the two possible inferences from the evidence in the record and balancing one against the other. The court, overlooking most of the evidence and depreciating the remainder,[11] concluded that, since respondent gave reasons for the selection, which would have been valid had they been the real reasons, the Board was in effect barred from finding that respondent laid off the employees for their union activities, in violation of Section 8(a)(3) and (1) of the Act. The court's action in this

[11] Thus, the court viewed Scharff's interrogation of the employees named in the letter as merely an effort to check the correctness of the Union's statement they were on the organizing committee (R. 731), but this interpretation does not explain Scharff's veiled threats to certain of the employees when they refused to withdraw their names (see the Statement, *supra*, pp. 10-11), which the court does not mention. Similarly, the court pointed out that the Board made no comparison between the union activity of the employees laid off and those retained (R. 732). But the mere fact that respondent did not lay off all the union adherents does not establish that it did not discriminate as to others. See *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 602. Moreover, the reason for singling out the nine employees involved was because they were listed as members of the Union's organizing committee (see, also, n. 12, *supra*, p. 12).

regard was clearly erroneous, for the Board in each instance must find the true reason for a discharge or a layoff regardless of reasons given by an employer. Once the Board makes its determination and once that determination is "supported by substantial evidence on the record considered as a whole," as it was in the present case, the Board's determination is "conclusive" (Section 10(e) of the Act).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below, insofar as it rejected the Board's findings that the discharges and layoffs were discriminatorily motivated, in violation of Section 8(a) (3) and (1) of the Act, should be reversed and the case should be remanded to that court with directions to enforce those portions of the Board's order relating to the discharges and layoffs.[46]

ARCHIBALD COX,
Solicitor General.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
RUSSELL SPECTER,
Attorney,
National Labor Relations Board.

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[46] The court below has already enforced the other portions of the order (see the Statement, *supra*, p. 23).

APPENDIX

The relevant provisions of the National Labor Relations Act (61 Stat. 136, as amended, 29 U.S.C. 151, *et seq.*, and Supp. II) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

SEC. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following

the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

SEC. 10. (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderence of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with

or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

* * * * *

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence

so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 77

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WALTON MANUFACTURING COMPANY and
LOGANVILLE PANTS COMPANY,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE RESPONDENTS

WILSON, BRANCH AND BARWICK,
ALEXANDER E. WILSON, JR.,
ROBERT T. THOMPSON,
615 Rhodes-Haverty Building,
Atlanta 3, Georgia,
JAckson 4-3611,
Of Counsel for Respondents.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

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STATUTE

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*)—

Section 10 (e) 2, 54

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 77

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WALTON MANUFACTURING COMPANY and
LOGANVILLE PANTS COMPANY,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE RESPONDENTS

STATEMENT OF THE CASE

The statement of the case contained in Petitioner's Brief constitutes an elaborate argument of the factual issues. It is Respondents' position that there are many inaccuracies and omissions contained therein. In order to fully point out these inaccuracies and omissions, it would

be necessary to present a complete counter-statement which would be a duplication of the argument on the factual issues. In order to avoid such duplication, the inaccuracies and omissions of the Petitioner's statement of the case are pointed out in the argument[1] (*infra*, p. 5).

SUMMARY OF ARGUMENT

The Court of Appeals properly performed its statutory responsibility under Section 10(e) of the National Labor Relations Act (61 Stat. 136, 29 U.S.C 151, *et seq.*) in this case. In reaching its decision the Court of Appeals expressly recognized the limitations upon its scope of review as well as its responsibility to determine whether the findings of the National Labor Relations Board with respect to questions of fact were supported by substantial evidence on the Record as a whole. The Court stated that it had made a painstaking review of the Record in the case and could only conclude that the findings of fact with regard to the four discharges and the nine layoffs in question were not supported by substantial evidence.

The scope of review of the Courts of Appeal was clarified and strengthened by the 1947 amendments to the Act. This Court has long recognized and effectuated this intent of Congress to impose additional responsibility upon the reviewing court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474 and *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498.

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1. Petitioner has made repeated reference to the case of *NLRB* v. *Florida Citrus Canners Cooperative*, No. 94, this term. Inasmuch as the Respondents in the two cases are entirely different, the industries involved are dissimilar and the cases involve different sections of the Act, it is respectfully submitted that the two cases should be considered separately.

An examination of the Record in this case reveals that the Court of Appeals did not misapply the law governing its scope of review, either "grossly" or otherwise. The decision of the Board was based upon surmise, conjecture, unsupported inference and false reasoning. The Respondents offered unchallenged evidence to support their decision with regard to each employee laid off or discharged. Naturally, being matters of business judgment, these decisions could not be supported with the uniform application of a precise formula. Each layoff and each discharge must, of necessity, depend upon the circumstances peculiar to it. Thus, an unskilled floor girl was laid off because her job was abolished. A trainee in a particular section was laid off because there were sufficient trained operators in the section. An operator whose job was abolished was laid off in preference to another employee who had a proven ability to learn a new operation at a much greater rate of speed. One of two employees doing the same job was laid off because her production record was considerably poorer than that of the employee retained. Another operator was laid off because her job was to handle the overflow work from two other operators when needed. In the production cutback there was no overflow. One operator was chosen for layoff for the reason that she was performing the least skilled job in her section and therefore lacked the higher skills of the other operators.

Obviously, from the above, it is apparent that there were good, sound business reasons for each layoff. The same was true of the discharge cases. Insofar as the layoffs are concerned there is no issue in the case as to its economic necessity. The only issue was which employees should have been laid off. The General Counsel made no attempt to produce evidence contrary to the reasons advanced by Respondents. The decision of the Trial

Examiner and the Board was to the effect that Respondents chose the wrong employees for layoff. In an attempt to support that conclusion the circumstances of each layoff were applied to the other layoffs. Obviously the circumstances were not the same in each case. However, where there was a factor which was controlling in one case because of the circumstances but was not controlling in another because of the circumstances, then the Board found discrimination in both cases. The Board and the Trial Examiner were completely blind to the obvious, distinguishing circumstances peculiar to each case. In any event, discrimination was found in all instances. Undoubtedly due to the complete lack of evidence to the contrary, this same approach of applying the peculiar circumstances surrounding one decision to an analysis of the other decisions was utilized throughout the Intermediate Report and the Board decision. If, however, the Board's reasoning were actually put into practice in the layoff, the result would be outrageous discrimination against the employees whom Respondents would be forced to terminate. Undoubtedly, if these latter employees had been the ones designated as the "union organizing committee" their layoff would have been vigorously condemned by the Board. In that light, the purpose and effect of the letter are crystal clear. It was an arrogant attempt to secure preferential treatment for the Union adherents in the face of a mass, economically necessary, layoff. In the light of the Board's decision, and reasoning, this bold maneuver was most successful.

The Petitioner's argument that the Fifth Circuit requires a higher standard of proof in a case of this type or that it has formulated special rules for review which are inconsistent with the Act and the governing principles laid down by this Court is completely unfounded. The Court in this very case expressly stated the applicable principles

of law and properly applied them. To reach any other result in this case would be to confine the review powers of the Courts of Appeal to a consideration of the evidence in support of the Board's decision in isolation, in clear derogation of the express intent of the Congress.

ARGUMENT

It has been the contention of the Respondents throughout this case that the evidence permitted of only one result —a complete dismissal of all charges. The Court below reviewed the Record. With the exception of a few isolated incidents, which certainly do not constitute an intensive campaign to defeat a union, the Court of Appeals found that the Board's findings and conclusions were not supported by substantial evidence in the Record considered as a whole.

It is argued by the Petitioner that the Court below has displaced the Board's choice between two fairly conflicting views. An examination of the Record and the Court of Appeals decision reveals that the Board's view was not a fair and reasonable one. It was not supported by the evidence.

I. The Facts

There is a very important factor involved in this case which distinguishes it from the ordinary unfair labor practice case. This factor was injected into the case by the union when it dispatched a letter to the Respondent Walton setting forth a list of purported union advocates and impliedly threatening Labor Board action in the event of their termination. It is of significance that a copy of this letter was sent to the National Labor Relations Board at the same time the original was sent to Respondent Walton (G.C. Ex. 5, R. 472). The Respondents' officials and representatives were not blind to the significance of this letter.

It was an outright threat of litigation in the event the persons listed therein did not retain their jobs. Naturally Respondents' officials recognized this threat. Prior to and at the same time this was occurring Respondents were preparing for a cutback in operations which would result in the layoff of a number of employees. Preparations were being made; decisions had been reached as to which employees would be laid off and which would be retained. When the Union's threat arrived, the Respondents were placed in a dilemma. On the one hand, the Union organizing committee could be retained in full and nonunion personnel laid off, thus avoiding charges from the Union. But this would be a clear violation of the law because the people being laid off would obviously and certainly be the victims of discrimination because of their *failure to participate in union activities*. This is no less a violation of the law than that which Respondents were accused of in the present proceeding. The Respondents had the other alternative of following the plans which had been tentatively arrived at, that is to say, "letting the chips fall where they may" by making a decision as to which people should be retained and which should be laid off upon the basis of merit. A number of the people on the Union's list ended up being laid off. *But the undisputed testimony is that they were destined for layoff before the union letter arrived.* Why were they so destined? Because as individuals they did not measure up to the standards of the employees who were to be retained. Perhaps, this provides some explanation for this unusual move on the part of the Union. Perhaps, the Union suspected that in the event of a layoff these people, who were not as competent and not likely to retain their jobs, would be the ones to go. *And so the issue reduces itself to whether a union may intimidate an employer into preferring the organizing committee over nonunion people through a threat of litigation when a layoff becomes necessary, even though*

the facts show that they do not otherwise deserve the preference (See: *Houston Maritime Assoc., Inc.*, 121 NLRB No. 57).

In this letter the named employees were designated as the "organizing committee". The evidence reveals that not one of the employees took any part in the Union's organizational efforts other than signing a card and attending a meeting or two. All organizing was done by a team of professional organizers sent in from various parts of the country (R. 276, 277).[2] This evidence leaves but one conclusion: *There was no organizing committee* and the resulting letter sent by the Union to the Respondents announcing the existence of such a committee was a devious attempt by the Union to force the Respondents to give preferential treatment to the union advocates in its operations. The decisions of the Trial Examiner and the Board not only validate and give official sanction to this devious scheme but in fact appear to do so with relish and enthusiasm.

To say the least, it is quite apparent that this maneuver on the part of the Union completely diverted the attention of the Trial Examiner and the Board away from a true and impartial evaluation of the facts.

Another important factor which distinguishes this case from the ordinary unfair practice case is the procedure followed by the Trial Examiner and ratified by the Board in determining that *all of the layoffs* were discriminatory. The authority upon which this decision is based is cited by the Trial Examiner as "Uspensky, Introduction to Mathematical Probability (McGraw-Hill 1937), Chapter 1" (R. 153). The Trial Examiner "reasoned" that the probability of the nine union people being chosen for layoff at the time they were chosen was 2,758,590 to one. According

2. R.—"Transcript of Record."

to this "jurist" we can now decide cases by a mathematical formula of probability. Or, to put it in his own words, we may reach decisions on important matters "on the basis of pure chance * * *" (R. 153). It is respectfully submitted that if such is proper the whole system of jurisprudence under which we have operated for centuries had been superseded. There is no longer a requirement that one party carry the burden of proof or that there be evidence. All we need do is refer to Mr. Uspensky for the answer. It is quite obvious that the decision of the Trial Examiner in this case was based precisely upon that system of mathematical probability. He, and the Board, took one look at this case and said you can't lay off the union workers. They gave no more consideration to the relative skills and merits of the various employees than Uspensky's formula did. *These Respondents had the audacity to go through with a planned layoff in the face of the union threat letter and that is all the Trial Examiner and the Board needed.* From that point on it was a matter of "fly specking" the testimony to find ways and means of supporting the desired result. This case was decided on two things; (1) a mathematical formula, and (2) a Labor Board predisposition against any layoff of union committee members. It is respectfully submitted that neither of these bases are proper and that when the Board decision is viewed in this light the petition for enforcement should have been denied.

IN ORDER TO FULLY APPRECIATE THE SIGNIFICANCE OF THIS DOCUMENT, WHICH WAS RECEIVED INTO EVIDENCE AS GENERAL COUNSEL'S EXHIBIT 5, IT MUST BE TAKEN INTO CONSIDERATION THAT THERE IS NO ISSUE IN THE CASE AS TO WHETHER A LAYOFF WAS NECESSARY AT THIS TIME. IT WAS CONCEDED BY THE GENERAL COUNSEL THAT THE LAYOFF WHICH WAS EFFEC-

TUATED ON JANUARY 31 WAS NECESSARY FROM AN ECONOMIC AND BUSINESS STANDPOINT. THERE IS NO ISSUE IN THIS CASE OVER WHETHER THE RESPONDENTS DID IN FACT CUT BACK THEIR WORK FORCE AND CONTINUE THE CURTAILED OPERATIONS UP TO THE TIME OF THE TRIAL.

A large number of employees were laid off on January 31, 1958. Names of eight of these appear on General Counsel's Exhibit 5. Another employee on that list, Leila Beaver, was likewise laid off on January 31, from Loganville Pants Company along with many others. Three of the employees on the list, Mary Lou Partain, Jeanette Beavers and Lucy Brooks were not laid off at all.

The Record is rather replete with explanations of why the alleged discriminatees were laid off as opposed to others. These explanations were furnished by the Respondents. *The Record is silent with respect to any evidence concerning discrimination for union reasons against these people with the sole exception of General Counsel's Exhibit 5.*

Before going into the details of each case, a few words about the Respondents' presentation. In the case of each one of these layoffs, the supervisor involved, the superintendent, and Morris Scharff were interrogated concerning the reasons. This is everyone connected with management who had any information concerning the reasons for these layoffs. The same is true of all the other facts in this case. The Respondents brought forth voluntarily every person within their power who had any remote connection with the issues and interrogated them and subjected them to cross-examination. In addition, Respondents revealed production figures, employee figures, texts of speeches and other information voluntarily and all in the interest of truth. Respondents did this because the facts are there.

Respondents did this because they had nothing to hide. They did this with the full knowledge that several witnesses testifying as to the same subject are not likely to relate precisely the same details. It would be a strange presentation if they did. It would be an unbelievable case if there were no minor inconsistencies in the testimony of the various witnesses. Yet, the Trial Examiner used the device of pointing to minor inconsistencies in the testimony to justify his predetermined conclusions. His Intermediate Report is a better brief in support of Petitioner's case than the one they filed. On the other hand, the basic facts, which will be hereinafter discussed, run throughout the testimony. They establish without question that these employers made an attempt to comply with the law in every respect, *including a refusal to discriminate against those whose cause was not being pleaded by the Union.* These are companies which made their choice of complying with the law even if it meant additional expense and trouble. And now, because the red flak which was introduced into evidence as General Counsel's Exhibit 5, has blinded the Trial Examiner and the Board into ruling against the Respondents on every single discharge or layoff alleged, these Respondents are paying the price for not acquiescing in the coercive tactics of the Union. If the layoffs of January 31 are unfair labor practices then another amendment will have been written to the National Labor Relations Act. In the unlikely event this case reaches such a result, the effect of it will be to require employers to give preferential treatment, not nondiscriminatory but preferential treatment, to the union leaders over the other employees, union and nonunion. This is the real issue in this case.

The indirect bearing of the Union's threatening letter upon all the issues in the case cannot be overlooked. It

is the backbone of the Trial Examiner's and the Board's decisions. *Remove this self-serving document, this record-building maneuver, this litigation-minded trick, from the evidence and the Board's case falls flat on its face.* The letter served its purpose of blinding the Trial Examiner and the Board and of covering all the gaping holes in their case.

When the Record was reviewed in its entirety by the Court of Appeals, the findings of the Trial Examiner and the Board were found to be completely out of proportion to the facts, erroneous and without just cause. *The Trial Examiner credited Respondents' witnesses only to the extent they corroborated General Counsel's witnesses and otherwise discredited them completely.* Where as here, the Record reveals the credibility findings to be so antagonistic to the actual evidence in the Record, much of it uncontested and unquestioned, then these findings establish clearly the bias and prejudice of the Trial Examiner, absolutely removing any possibility of Respondents receiving a fair and impartial adjudication by him. The Court of Appeals took cognizance of this.

An examination of the Record as a whole, the Trial Examiner's rulings and remarks contained therein and the overall tenor of the Intermediate Report with its flair for advocacy as opposed to judicial determination clearly establish the bias and prejudice of the Examiner. There is no reasoning. There is no attempt to reconcile conflicts and logically arrive at facts and truth. In many instances there is no reference to the facts except in broad generalities and unsupported conclusions. Frequently, findings and conclusions are supported only by wholly unrelated findings and conclusions as to other matters. If a record is lengthy, complicated, controversial and technical, it does not justify taking the

expediency of reliance entirely upon credibility findings. It is an old game to fall back upon "credibility" when issues are difficult of resolution against a party. But does this justify brushing over obvious facts, uncontested evidence, gaping holes in the General Counsel's case? The General Counsel's case must rest upon facts, it cannot be supported by mere findings of credibility, as unrealistic as they may be. Likewise, credibility of witnesses cannot under any circumstances alter the facts. *This is a case where the Trial Examiner obviously became so completely overwhelmed by his determination to resolve all issues of credibility against the Respondents that he completely failed to perform his statutory duty of ascertaining the true facts by analyzing the evidence.* As one reads the Intermediate Report, it becomes increasingly obvious that the author thereof became more and more impressed with his own cute remarks about Respondents' witnesses and less and less concerned about the facts of the case. This evolution of misguided "logic" is finally climaxed by several conclusions on important issues against Respondents, of course, simply on the basis that everything else had been decided in favor of the General Counsel. This is not only erroneous analysis but it does serious harm to the judicial process under which the Trial Examiner operates. The Board in obvious routine fashion ratified the Intermediate Report with minor changes. For the first time, when the case reached the Court of Appeals, a fair and impartial analysis of the facts was made. The only fair conclusion which could be reached was that the evidence did not support the allegations of the complaint.

An examination of the credibility findings of the Trial Examiner reveals that they are supported by very minor inconsistencies, which inconsistencies are wholly in keeping with the extensiveness of the issues and the

normal lack of training in rhetoric and legal terminology of the witnesses. A reading of the testimony of the General Counsel's witnesses, which is not nearly so extensive per witness and which does not require relation of detailed facts on a multiplicity of subjects as does that of Respondents' witnesses, shows inconsistencies of far greater magnitude. For obvious reasons the Trial Examiner neglected to mention these inconsistencies. Likewise, he neglected to mention that the General Counsel's witnesses remained in the courtroom throughout the trial thus having the benefit of one another's testimony.

The Record clearly shows that after the Respondents became aware of the Union's organizational drive, the supervisors did not in any way interrogate or interfere with the employees concerning the Union (R. 335, 520-521, 525, 562, 564, 568-569). It is further disclosed by the Record that the only knowledge the Respondents had of the Union adherence of the employees laid off on January 31, 1953, was the letter received from the Union announcing that these employees were for the Union (G. C. Ex. 5, R. 472).

In support of its position, the Petitioner argues in its Brief that Respondents waged an intensive campaign designed to defeat the Union's efforts at organizing the employees. This argument resembles the Trial Examiner's approach to the facts of the case. A few isolated incidents are combined with several perfectly legal occurrences to form the basis of a broad general conclusion of a widespread, illegal attack upon the Union. This broad general conclusion then forms the basis for finding that all conduct involved in the case is illegal.

In his Report, the Trial Examiner stated:

"The Complaint does not allege the announcement of the additional benefits, to defeat the Union's or-

ganizational efforts, as a violation of the Act, and I therefore will make no findings based thereon." (R. 65).

However, in his conclusions he lists as one of his findings of illegal conduct:

> "(1) A letter to their employees outlining new benefits, paid vacations and holidays which employees could enjoy without paying 'dues or initiation fees to any outside union' " (R. 151).

This obvious inconsistency on the part of the Trial Examiner is characteristic of the defective "reasoning" upon which his decision is based. The Petitioner likewise relies upon these facts in its argument (P. B. p. 3).

The Record reveals that the Respondents in the exercise of the right of free speech sought to inform the employees of their rights as guaranteed under Section 7 of the Act. This was done in the form of speeches made by Morris Scharff to all employees (Resp. Ex. 89, 90). The General Counsel's well-coached witnesses varied as to the true context of these speeches, and the Trial Examiner so found (R. 69-70). (*It is significant that these obvious inconsistencies and vague accounts were not considered in determining their credibility.*) The Respondents in an effort to clarify this incorrect testimony of the General Counsel's witnesses made available as exhibits, copies of the speeches to the Trial Examiner (Resp. Ex. 89, 90). It cannot be said that these speeches contain anything other than what management may do under the rights of free speech as set forth in Section 8(c) of the Act. The Trial Examiner and the Board so found with the exception of one portion of the speech (R. 71). The finding in this latter respect is wholly unfounded and the Court of Appeals so ruled (R. 723). It cannot be assumed that such a state-

ment made by a person, who is admitted to be acting only in an advisory position, can reasonably be interpreted as the equivalent of a threat to shut down the plant rather than deal with the Union as found by the Trial Examiner (R. 72). It is clear that the Respondents advised the employees otherwise (R. 66, 82, 545, 561). The witnesses of the General Counsel clearly demonstrated that no such threat was conveyed to them. This conclusion by the Trial Examiner and the Board is not supported by the evidence and is too remote to bring it within the realm of probability. It is simply another example of the zealous way in which this Trial Examiner set about to crucify these Respondents. The Court of Appeals recognized this and refused to go along.

The evidence further reveals that the conversations between Morris Scharff and employees were made without any threat of reprisal or promise of benefit (R. 66, 520, 545).

While the Respondents have contended throughout that the conclusions that Supervisors Higgins and Ewing threatened employees were not well founded, even if they did occur they obviously were isolated, unimportant incidents. The findings were that Higgins stated to one of the alleged discriminatees "that they (the Scharffs) would close their plant down before they would work union labor" (R. 76). The Record clearly shows that the employees were expressly informed otherwise (R. 66, 82, 545, 561). The finding as to Ewing was that she stated to another alleged discriminatee, Pauline McGee: "If you don't want to dig your own grave, you better shut up talking about the union." (R. 77). The Record is replete with testimony that Respondents' supervisory personnel engaged in no anti-union campaign (R. 335-336, 521, 525, 552, 561-562, 564, 568).

The evidence further shows that Superintendent Hughley, who was in charge of the entire Loganville Pants Company operation, did not in any way interrogate or otherwise interfere with the rights of the employees under his jurisdiction. Despite the absence of any union animus on the part of Hughley (R. 565), the Trial Examiner nonetheless found that Hughley had promulgated a rule against union talk in the plant (R. 80). Even the Board couldn't bring itself to adopt this illogical, absurd conclusion.

It is to be noted that the General Counsel in its attempt to convict the Respondents of violating Section 8(a)-(1) of the Act alleged other incidents of interference, restraint and coercion. These other allegations were completely without merit and were so found by the Trial Examiner (R. 80-81).

It is submitted that any conduct on the part of the Respondent which might in and of itself be construed as a violation of Section 8(a)(1) of the Act, when viewed in the entirety of the proceedings, are of such an isolated nature as to not constitute a violation of the Act. It is further submitted that any and all conversations between management personnel and employees, in which management spoke, were made in the exercise of rights guaranteed under Section 8(c) of the Act.

The entire Record plainly shows that once the Respondents became aware of the Union's organizational drive, an effort was made to point out and guarantee the rights of the employees under Section 7 of the Act. Almost all of the General Counsel's witnesses testified of no interrogation as to union interests by any of the supervisors (R. 336, 520, 521, 525, 552, 561-562, 568, 569). Yet, the Intermediate Report and the Record plainly show the Trial Examiner picked out various isolated incidents of a highly ambiguous na-

ture and read into them elements in the nature of threats and other coercive conduct.

The Layoff of January 31, 1958

The Respondents in this case commenced business in the Summer of 1957. They were newly chartered corporations entering into the garment business for the first time in Loganville, Georgia. Respondent Walton Manufacturing Company, the principal corporation here, is in the business of manufacturing and selling men's dress suits. Respondent Loganville Pants Company was engaged in the manufacture of the pants for men's dress suits, with Walton Manufacturing Company as its sole customer. Loganville Pants Company ceased operations on or about January 31, 1958, and has not operated since that time (R. 588).

The Record in this case shows that Respondents started their operations with completely inexperienced workers. The management of the companies was highly skilled and very experienced, having been in the field for many, many years. It was necessary for the Respondents to train the green, inexperienced personnel who started to work in the Summer of 1957. Naturally, inefficiency and low production were to be expected during this period of training. Likewise, it was necessary to employ more workers to meet production requirements in the early months than would be expected to do the same work as skills were acquired and efficiency increased.

The garment business is seasonal in nature and this results in fluctuations from time to time in the work force. Temporary seasonal lags may be bridged by reduced hours. More prolonged drops bring about layoffs (R. 672-674).

So it was in the late Fall of 1957, a combination of increased efficiency in production and curtailed production

requirements combined to make necessary a sizeable reduction in Respondents' work force. *It is important to note again here that the necessity or the legitimacy of the layoff on January 31, 1958, is not in issue* (R. 113). The only issue with regard to the layoff involves the question of which employees should have been laid off and which retained.

The Trial Examiner made a detailed analysis of each individual choice involving alleged discriminatees and determined that each and every choice was erroneous and discriminatory in nature. His "reasoning" during the course of this analysis is so inconsistent and illogical at times that it almost surpasses the imagination. For example, Respondents' witnesses testified that four factors were considered in determining which employees were to be laid off. With clock-like precision the Trial Examiner took those factors and whichever one did not fit in each particular case he used it as a reason for discrediting the Respondents' witnesses without any regard for the peculiar circumstances involved. If Respondents' witnesses said seniority was a controlling factor, then the Trial Examiner would brush that fact aside and concentrate his fire on some other factor. If on the other hand another employee under consideration had seniority in her favor and the Employer did not give that controlling consideration, then that provided a basis for finding a violation. A few days seniority held great significance in one case but three weeks was of no consequence in another. If an employee had been reprimanded or warned that was inconsequential. Conversely, if the Record did not show a reprimand then that was a controlling factor. If the Respondents offered a comparison which could not be overlooked or explained away (which with this Trial Examiner was a practical impossibility), then the important factor was that Respondents neglected to produce additional comparisons. On the other hand, in

the case of one non-production employee the controlling factor in the Trial Examiner's mind was that Respondents failed to show a comparison with anyone else—although the Record showed that her job was different from any others and was abolished. Obviously, the choice of employees for layoff must include some intangible, subjective considerations. Certainly, when the decision is participated in by two, three or more individuals they would not be expected to use the same descriptive terms to explain the choice. It is unreasonable to expect each one of them to be able to list each and every factor leading to each and every decision. Yet, in this case each time there was the slightest variation in terminology between Respondents' witnesses it became a giant inconsistency. Each time one witness listed a reason for a choice which another witness might have overlooked it became a deliberate fabrication. Thus, we are told that one witness' testimony that one employee's quality was "a little better" than another's is inconsistent with another witness' testimony that the same employee had "a greater potential and was a better operator." (R. 132). If the Respondents' supervisors told an employee she was doing better or gave any word of encouragement then that was evidence that the employee was discriminated against in the layoff. If there was no evidence of words of friendly encouragement then the absence of reprimands was important.

In a case of this kind, with as many hundreds of pages of testimony as this, it is absolutely fantastic to believe that not one single witness for Respondents uttered one single word of truth, except where something was useful against Respondents. It is incomprehensible to find that every last issue of credibility was resolved in favor of the General Counsel's witnesses and against the Respondents.

The Trial Examiner finds and Petitioner argues in its Brief that sixteen employees were laid off on January 31, 1958. The Record indicates that there were at least twenty laid off by Walton Manufacturing Company that day and at the same time Loganville's entire operation was suspended (R. 588). The effect of the ruling which the Board seeks to enforce is to hold, without equivocation, that not one single member of the organizing committee should have been laid off in a major cutback in the work force. Therein lies the fallacy in the Board's case. They got so carried away with making an example of this Employer that they forgot about evidence; they forgot about logic; they apparently forgot about the review powers of the Courts.

The burden of proof in this case lies with the General Counsel. It is up to him to prove that each one of these layoffs was discriminatory. An examination of the Record as a whole indicates that the General Counsel completely failed to carry that burden. The Trial Examiner's analysis of the layoff deals almost entirely with his attempt to tear down and discredit Respondents' case. Even if he had been able to do this, the stark reality remains that the General Counsel's case consisted entirely of the fact that these people were named in the letter as members of a fictitious organizing committee. It is respectfully submitted that this does not prove discrimination according to legal requirements. Moreover, the substitution of the inexpert opinion of the Trial Examiner and the Board in lieu of the direct, expert testimony of the Respondents' witnesses, does not provide a basis for a finding of discrimination. The Trial Examiner had applied a test of absolute precision to the layoff decisions. Such decisions, involving the relative merits of people, can never be absolute. Obviously, there are no black and whites in such problems but merely shades of grey. The consideration is not whether an em-

ployee's quality of work was so unacceptable that she should be discharged, as the Trial Examiner seemed to require. The proper consideration is whether her quality is lower than an employee who is to be retained. A layoff calls for a completely different set of considerations from a discharge. This simple fact seemed to escape the Trial Examiner and the Board completely.

The Petitioner's Brief likewise fails to take into account the vast distinction between the considerations which must apply in a layoff situation as opposed to a discharge. On this very point the argument that the Court displaced the Board's choice between two fairly conflicting views fails completely. In considering the layoff decisions the Trial Examiner and the Board potently refused to see the facts. In every case the facts support the choice made by the Respondents. It would be indefensible to lay off an operator from her regular job in lieu of another operator whose production record was poorer and who simply handled overflow work. Yet this is what the Board held in the case of Nellie Hood (see *infra*, p. 25). It likewise would have been inexplicable if the Respondents had given Nellie Hood, an unskilled floor girl who carried bundles to the operators, a job in which she had had no training or experience (see *infra*, pp. 25-26). Frances Elizabeth Johnson was a *trainee* in a five-girl section. The Board ruled that because she had been given words of encouragement and a recent raise, she should have been retained over experienced operators who had been doing the job for months. In each case, the Examiner and the Board found some circumstance, some factor which they relied upon to dispel the Respondents' logical explanations of the layoff decisions. But if the circumstances were reversed no fair-minded person could say that these factors were sufficient to support a decision to lay off the other employee or em-

ployees. The Record simply does not support the Petitioner's argument that there were two fairly conflicting views. A detailed comparison between the largely uncontested facts which support Respondents' position as to each layoff and the largely insignificant circumstances relied upon by the Petitioner to support its position establishes beyond question that the conclusions reached by the Trial Examiner and the Board clearly are not supported by substantial evidence. Therein lies the basic fallacy of the Petitioner's position before this Honorable Court.

LAYOFF OF LELA BEAVER.

The layoff of Lela Beaver is a perfect example of the Trial Examiner's approach to this whole thing. Quite a number of employees at the Loganville Pants Company were laid off on January 31. The remainder of the work force was transferred to the Walton Manufacturing Company. Lela Beaver was one of those who was laid off. *She was the only one of a large group in the Loganville group laid off on January 31, whose name was mentioned in the Union's letter. She is the only one laid off on January 31, from Loganville Pants Company named in the Complaint. There is no other evidence in the Record which would support a finding of discrimination in the case of this layoff.*

In an effort to overcome this obvious weakness, the Petitioner adverts to a statement which Loganville's manager, Mr. Hughley, allegedly made in response to Beaver's accusation that her layoff was due to union activities. It should be noted that this statement itself was alleged to be a violation of Section 3(a)(1) in the Complaint. The Trial Examiner sustained the allegation but the Board reversed him. Now the Petitioner seeks to rely upon it in support of its position as to Beaver's layoff. On the other hand,

the Respondents have related the reasons Lela Beaver was not transferred to the Walton plant at the time of the layoff. As in the case of any layoff, questions can be raised, comparisons can be drawn. There is no evidence, however, which would even hint that the factors which were presented were not valid and did not provide the basis for the decision. The reason Lela Beaver was laid off was that in reducing the work force it was necessary to consolidate the operation which she was doing with another job. It was considered that Lela Beaver would be slow in learning the other operation, *slower than the other girl*, Alice Lowe, and therefore Alice Lowe was retained to do her work and Lela Beaver's.

The Record here is unquestioned that Beaver was unusually slow in learning and therefore a girl who was faster in learning was put on the combined jobs. The Trial Examiner and the Board rejected this unchallenged explanation for Lela Beaver's layoff. The question is whether this Employer must retain an employee for a new job who is admitedly slower in learning than another girl who is available (R. 432, 645-646, 683).

It is significant to note here the Trial Examiner's analysis of this layoff. He rejected the testimony of Beaver's former supervisor, Atha, who had absolutely no interest in the outcome of the case since she was no longer employed by Walton (R. 117). He *assumed* that Beaver's continuous make-up pay was due to the unavailability of work when the only conceivable basis for the assumption was Beaver's testimony that Hughley had made an off-hand remark to her that she could make production if they had the work. Beaver's testimony does not show an expression from her that this was the reason. This certainly doesn't prove the fact and even if it did it wouldn't support the Trial Examiner's findings since the basis of the layoff was her in-

ability to learn a new operation. Then the Trial Examiner attempted tc take advantage of a letter which was written by Morris Scharff to Counsel for Respondents in which he indicated that he wasn't sure of the basis for the layoff but assumed it was for poor work. This letter was admitted over objection of Respondents and Respondents contend that it should have been rejected. However, a reasonable reading of the letter clearly shows that Scharff qualified his remarks because he was writing from memory without the benefit of a thorough investigation into the matter.

The Trial Examiner made a big point of how many operations Beaver was capable of doing. Here again he attempted to inject a basic factor—versatility—which did not figure into the layoff. Inability to learn a new job was the basis. But the Record does not support his finding that Beaver performed two operations while the employee retained performed only one. Beaver's job was setting flies and turning corners. This obviously was one operation which most witnesses referred to as setting flies. Alice Lowe's job was sewing on belt loops. There is absolutely no evidence that one of these jobs is easier than the other and yet the Trial Examiner, who certainly revealed no expertise in the garment field, *assumed* that Beaver's job was more difficult. Here again he is injecting a factor, *based entirely upon assumption*, which did not figure in the layoff. It is interesting to note that the Trial Examiner himself referred to Beaver's job as "the operation of setting flies and turning corners." (R. 116). In conclusion, the Trial Examiner said that Beaver was equal to Lowe in quality, production and versatility—only one of which is supported by the Record—and therefore seniority (approximately seven weeks) should prevail. Typical Labor Board fashion, a criterion is adopted and applied in

robot fashion and if everything doesn't fit then it's wrong. The Trial Examiner and the Board refused to see the reality of the situation. It is fine to attempt to follow criteria where possible. But, here there was another compelling factor—her inability to learn a new job within a reasonable training period—which no one denied and the Respondents have a right to follow it. The Record simply does not support the Board's finding as to Lela Beaver.

LAYOFF OF NELLIE HOOD

Nellie Hood was a floor girl. She delivered materials to the various operators and did odd jobs. Her job was abolished as a result of the layoff and the work which she was doing was absorbed by various other employees who were regularly engaged in more productive and more highly skilled operations. The supervisor even did a portion of it. This was a sort of luxury job which could be and now is being done by the other workers. This is a logical place for a cutback when the work force is being reduced (R. 320, 428-429, 467, 516, 637, 658-659, 692-693).

The Record clearly shows no illegal conduct was committed by the Respondents with respect to this employee. The isolated statement of Supervisor Carter had no threat in it and which fact was admitted by Nellie Hood (R. 554).

The Trial Examiner's findings regarding Nellie Hood are unbelievably fantastic. About all he has found to say is that Respondents failed to come up with a comparison between her and some other employee and he discovered an inspector who had less seniority who should have been explained away. Hood was not a production employee. She matched up bundles of cloth and hand carried them to the machine operators. She had no production quota; in fact, she produced nothing. *She performed an un-*

skilled job which Respondents could do without in a cutback and so it was eliminated. Her job was eliminated, therefore, she was laid off. It was a position layoff. This seems simple enough but the Trial Examiner insists that it be justified on a seniority basis with someone doing an entirely different, unrelated job who obviously was already trained where Hood was not. The burden of proof is upon the General Counsel. It is respectfully submitted that there is no evidence in the Record to support the Trial Examiner's and the Board's findings as to Nellie Hood.

LAYOFF OF FRANCES ELIZABETH JOHNSON.

There were five operators in the lining section, Frances Elizabeth Johnson, Mary Barnes, Annie Brooks, Imogene Meeks and Odele Barnes. Mary Lou Partain also spent part of her time in the lining section. At the time of the layoff, two of the operators in this section were eliminated, Mary Barnes and Frances Elizabeth Johnson. Frances Elizabeth Johnson had only been in the lining section for six weeks, and certainly in the cutback, she should be laid off before the others. The other girls were more skilled in the operation and more valuable to the Company. The work which she had been doing was absorbed by Odele Barnes and Imogene Meeks, two highly skilled, competent operators. *Now Mary Barnes was also laid off, but, unfortunately for her, her name did not appear on the Union's threat letter.* This is not to say that Frances Elizabeth Johnson was an undesirable employee. Because of her limited experience and skill, she was simply less valuable than others in the section. Those are the people you eliminate when you cut your work force (R. 319-320, 417-419, 441-442, 446-447, 467, 515-516, 625, 657-658, 692-693).

The factors which were given weight by the Trial Examiner, and which Petitioner would have this Court fol-

low with respect to this employee, were that she was given a raise a few weeks before her layoff and had been complimented by the plant superintendent (R. 135). The Record clearly shows that Johnson was given the raise when she was put on the new job in the lining section as an incentive to work hard and develop her talents. *She was on a training program at the time of the layoff.* She was the fifth employee in a five girl section. The result which Petitioner seeks would have the Respondents lay off a trained employee in preference to a trainee

The analysis of Johnson shows that the Trial Examiner and the Board here confused grounds for layoff with grounds for discharge. There is no inconsistency in the testimony. All the witnesses testified that Johnson's work was not satisfactory, her quantity and quality were below par. But, she was in training. However, when it came time to lay off it would be ridiculous to retain a trainee and lay off an experienced operator. Nothing said by the Trial Examiner or the Board in any way overcomes the fact that Johnson was the obvious choice for lay off in the section where she worked.

LAYOFF OF IDA HARPER.

Ida Harper was hired in July, 1957, and performed the job duties of hemming the lining of the coat (R. 361-362). *Harper admitted having a substantial amount of repair work* (R. 537-538), *trouble with the machine she operated* (R. 538), *and makeup pay every week she worked for the Respondents* (R. 538-539), *which resulted from her failure to meet production requirements* (R. 539).

Harper further admits that no supervisor or anyone else connected with management ever spoke to her about unions (R. 540-541). In addition to the above, *Ida Harper*

admitted talking and laughing and generally staying away from her work (R. 369, 541), *and being absent a great deal* (R. 410-411, 543, 592-593).

Ida Harper was laid off January 31, 1959 (R. 366-367). The Record is clear that this alleged employee was laid off for being an unsatisfactory operator, for general "horse-play" and because her job was only part time (R. 408, 439, 440, 591-592, 691-692).

The Record contains no evidence of discrimination to Ida Harper or a discriminatory motive in her layoff.

The Trial Examiner's analysis of Ida Harper's layoff is completely illogical. He finds that Proterman's testimony that she could not produce properly and that her make-up record was bad is inconsistent with Scharff's testimony that her work was unsatisfactory as to quality and quantity and both are inconsistent with Ewing's testimony that she was terminated for bad work. A great point was made of Ewing classifying Harper's termination as a discharge instead of a layoff—certainly a distinction which would not hold great significance outside legal circles. It almost gave the Trial Examiner apoplexy when she did explain that she didn't know whether the termination was classified a discharge or a layoff. Here again the Trial Examiner applied the test for a discharge in a layoff situation. The Petitioner would have this Court do the same. The Trial Examiner twisted evidence, took testimony out of context, added assumption and conjecture, and threw out testimony as unbelievable where it interfered with his objectives. In effect the Trial Examiner, here as in the other layoff cases, substituted his own judgment for that of Respondents' management personnel, who had years of experience in this field.

LAYOFF OF NELLIE WOOD.

Nellie Wood was hired August 5, 1957, to perform the duties of edge basting and taping fronts (R. 370). This employee admits she did not have a regular job and that she handled overflow work (R. 545). This employee testified she signed a Union card and attended Union meetings (R. 372), and that she received a ten cent wage increase after she had complained about being switched around and had refused to run a machine. This witness further admitted requesting a transfer to the pants plant, because *there wasn't enough work for her at the coat factory* (R. 545). Wood also testified Morris Scharff stated to the employees that he had no intention of closing the plant (R. 545). It is significant that this General Counsel witness admitted that the Union people told her that if she signed the paper authorizing the use of her name in the Union letter, she couldn't be fired (R. 546). This is obvious proof of the Union scheme to gain preferential treatment for its adherents in the Respondent's operations. The bias and prejudice of the Trial Examiner is illustrated by his gratuitous addition to her testimony of the statement that the Union assurance was "presumably for her Union activity." (R. 285). If that had been true it would certainly seem that someone would have seen fit to put it in the form of evidence.

The case of Nellie Wood is one of the more ridiculous. She was a "second stringer" who helped one operator or another when there was an overflow of work. Obviously, if she had been better than they, common sense would have dictated that she already be assigned to one of the regular jobs. *But the Record is absolutely unquestioned that her work did not measure up to that of the other operators.* The Trial Examiner in his zeal completely misstated the evidence on this point. He said Prosterman testified that

Wood *could* do the work as well as the other operators (R. 122). Actually Prosterman's testimony shows that under extensive cross-examination by the Trial Examiner he repeatedly said that Wood's work was inferior and finally speculated that she *might* have approached them if put on one of the jobs (R. 455-456). But still the fact remains that she wasn't then doing as well. Here again there is a misconstruction of the facts. Scharff testified that Wood's work was below par but not sufficiently so as to bring about her termination. In other words, you wouldn't fire her for it—but in a layoff it is a controlling factor. *The fact also remains that the other two employees had seniority over Wood.* After making so much "to do" over seniority in the other cases it is breathtaking to find it brushed aside here. The logic of the entire Intermediate Report and Board decision is laid bare here. The Trial Examiner was so blindly determined to find against these Respondents that he absolutely became irrational. In the case of Nellie Wood he is suggesting that a less competent employee, with less seniority, be retained over more competent senior employees. The melodramatic reference to Mrs. Wood's demeanor on the stand brings to the surface the uncontrolled emotionalism which underlies the entire Intermediate Report. It might just as easily be said that Mrs. Wood was upset because of being forced to testify against her sincere wishes or she might just have been frightened by the Trial Examiner and his rapid-fire verbal exchanges with counsel and witnesses.

The Record does not support the findings as to Nellie Wood. It is obvious that she, herself, did not consider that she had been discriminated against.

LAYOFF OF EVELYN HUDSON.

Evelyn Hudson was employed in the sleevemaking section performing an operation known as sleeve tacking. Also in that section were employees Regina Hall, who was making the seam and vent; Grace Barnes, who sewed the sleeve and the lining together; and Bonnie Thompson, who closed the end seams. *The job which Evelyn Hudson was doing was the most mechanical (requiring the least skill) in this section, and the other operators had more ability and were performing more complicated work* (R. 442-443). It was therefore determined that Evelyn Hudson should be the one eliminated from that section, her job abolished and the work absorbed by the other operators along with their own (R. 321-322, 442, 443, 468, 516, 625-626).

The Trial Examiner put great weight upon the testimony of this Evelyn Hudson. Yet, an examination of the record shows that her testimony was contradictory, inconsistent and vague. She did not have a good memory (R. 397), and yet she vividly quoted untruthful remarks made to her by Morris Scharff concerning the Union letter (R. 398). Later on she admitted that she didn't recall the exact words used (R. 575). This witness testified that she could not do the job of fellow employee Regina Hall (R. 573), and admitted that before and after being recalled, she could not perform the duties of making sleeves (R. 573-574, 576). Hudson also admitted that she failed to make production for her former employer and that she was fired for this reason (R. 575-576). The evidence further reveals this employee had considerable makeup pay (R. 577) and after being recalled was discharged on August 18, 1958, because she was unable to perform the duties assigned to her.

The Trial Examiner in his analysis of Evelyn Hudson's layoff again fell back on the standard doctrinaire approach. He decided that seniority and versatility favored Hudson over the other employees who were retained. He discredited unchallenged testimony that her work was not on a par with that of the others and that she was less skilled. In other words he applied the criteria and finding one to suit his purpose he used it as the basis of his finding of discrimination. He is in effect insisting that every consideration employed in each case be likewise applied to all other cases. The law is not that prohibitive. A realistic analysis of the rigid, austere standards applied by the Trial Examiner reveals them to be unbelievably harsh and unfair. Decisions involving the choice of one individual over another simply cannot be made to fit into a rigid formula (mathematical or otherwise). Respondents have repeatedly attempted to point out this fact but neither the Trial Examiner nor the Board even considered it. They simply tore into the Respondents' explanations with a vengeance and a vigor which only the most ardent advocate could duplicate. The resulting decision reflects for all to see the wisdom of the provisions for Court review which Congress wrote into the Act. One man, the Trial Examiner, got it into his head that these Respondents had violated the Act and from that point on it was not a matter of judicial determination through the processes of reasoning and logic. From that point on it was a question of how he could best tear down, explain away, discredit, destroy, belittle, twist, miscontrue and avoid Respondents' testimony and arguments. But, when it is all over the General Counsel has still failed to carry the burden of proof and there is no substantial evidence in the record to support the Board's decision. The Court of Appeals through the tedious process of examining the Record as a whole reached this inescapable conclusion.

LAYOFF OF BONNIE HAMILTON.

Bonnie Hamilton set welts. She was laid off on January 31. Mrs. Hamilton and another employee, Lucille Yancey,[3] both performed the same operation. Under the cut-back in production, it was only necessary to have one employee on this job, and Lucille Yancey was considered a better operator. This is not to say that Bonnie Hamilton was an unsatisfactory employee. Certainly, no issue has been raised by the Respondents in this respect. But, that does not throw light upon the layoff since Lucille Yancey was not an unsatisfactory employee either. In the case of a layoff, unfortunately, employees who may have proven themselves satisfactory must be laid off because there are not enough jobs to go around. The question in this instance, as in all other layoff situations, was which employees would be more valuable to the company under a cut-back in operations. It was determined that Lucille Yancey was more valuable and therefore she was retained and Bonnie Hamilton was laid off. There is nothing in the Record to challenge the wisdom of this decision. Even if there were, there is nothing to support a finding of discrimination (R. 310-311, 426-427, 637, 653-654).

The Trial Examiner really had to stretch to make a finding of discrimination in the layoff of Bonnie Hamilton. In this case she and the other Yancey both performed the same job. Yancey's production record is substantially better than Hamilton's. Even a person who knows nothing about the garment industry would readily see the wisdom of this choice. About all the Examiner has really said is that he doesn't want to believe it. He points to an "inconsistency" which arises by one witness saying under oath

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3. This is not the Lucille Yancey whose discharge is involved in this case.

that Yancey's work was a "little better" and another saying in a letter to his counsel that it was "much better". Then he says that a third witness characterization of Yancey as having "greater *potential*" is inconsistent with both of the foregoing. On top of that he credits and relies upon the testimony of an unskilled, unqualified floor worker (over the directly opposite testimony of at least three experts) to the effect that Yancey's work was not superior to Hamilton's. Then he adds as an additional controlling factor that Respondent failed to compare Hamilton with other employees, *without naming those others* or giving reason for such a comparison, and of course the fact that Hamilton had a "few days" seniority over Yancey was a matter of utmost importance in convincing the Examiner that the discharge was discriminatory. It is respectfully submitted that not one single point relied upon by the Examiner to find discrimination against Hamilton was valid and there is absolutely no evidence to support same.

LAYOFF OF PAULINE McGHEE.

Pauline McGhee was also laid off on January 31. An employee by the name of Charlotte Findley was retained in preference to Pauline McGhee because it was considered that she had a greater potential and would thus be a more valuable employee. Pauline McGhee basted bottom seams. Charlotte Findley basted bottom lining. These jobs were very similar in nature and under the cutback in operations only one operator was required to do both jobs (R. 311-312, 436-438, 512, 654, 664, 690-691).

The Trial Examiner found this layoff to be discriminatory for several interesting reasons. First he acknowledges that Charlotte Findley had more seniority than Pauline McGhee (although he is quick to point out that it is only a matter of three weeks). Where seniority was an im-

portant factor when it favored the employee laid off, and where three weeks was a significant period in one case and even a "few days" was considered important, now seniority not only is unimportant but he refuses to believe that this was considered in the layoff. Then he refuses to believe, without any supporting evidence to contradict the expert testimony, that Charlotte Findley had more potential or would prove to be a more valuable employee than McGhee. The Examiner deliberately misinterpreted the testimony of Prosterman that Findley earned more money than McGhee. An examination of the Record clearly reveals that in the garment trade one employee "earns more money" when she produces more pieces per hour. Earnings per hour are always the important factor in a piece rate operation such as this. The gross pay argument advanced by the Trial Examiner is merely a subterfuge. Even so, it is misleading even if gross pay were the proper test. The difference in the hours worked and particularly in the overtime and makeup pay are matters which cannot be overlooked.

The records show that Findley had less makeup pay (which is the difference between that earned and the legal minimum of $1.00 per hour) than McGhee throughout the entire history of their employment. The record also shows that Findley had no more makeup after the first week in December, 1957, while McGhee continued to have makeup for at least an additional month.

Finally the Examiner stated his real, and only, reason for finding that Pauline McGhee was discriminately laid off when he relied upon his "general lack of faith in the credibility of Prosterman, Myrtle Ewing and Morris Scharff" (R. 149). It is respectfully submitted that there is no evidence in the record upon which a finding of discrimination may be made as to Pauline McGhee.

LAYOFF OF VIOLET EWING.

Violet Ewing made welts. She was terminated on January 31, as a part of the cutback in production. Violet Ewing and Margaret Britt did similar but not identical work. In addition to their other work they shared the sewing of facings, a mechanical operation. The job which Margaret Britt performed was more complicated than the one performed by Violet Ewing. The decision was there made to retain Margaret Britt and have her do Violet Ewing's work along with her own rather than the reverse (R. 310-311, 426-427, 466, 689, 637, 653-654).

The Trial Examiner's analysis of Violet Ewing's layoff consists of a listing of several things which Respondent did not do. For example, Respondent *did not* reprimand Ewing for her unsatisfactory work. (This was not a discharge for cause but a layoff.) Respondent *did not* compare Ewing with an employee named Madeline or explain why the two were not compared—although there is nothing in the Record to indicate why they should be compared. There is no showing that Madeline was ever assigned to the job performed by Ewing. The Trial Examiner just assumed that there should be such a comparison.

Respondent did recall Ewing in October of 1958, and Prosterman is reported to have stated to Supervisor Higgins that she was a good worker. *Again* she was not discharged for cause but laid off in preference to another employee.) The only other factor alluded to by the Examiner was seniority which again becomes important because it favors the alleged discriminatee. Those considerations—failure to reprimand and failure to compare with an employee, whose full name is not even known, plus commendatory remarks upon reinstatement, and of course seniority—are the basis for the Examiner's refusal to accept Respondent's explana-

tion for Violet Ewing's layoff. It is respectfully submitted that there is absolutely no validity to the Examiner's analysis and that each and every premise upon which it is based is false and meaningless.

The Trial Examiner stated his general conclusions regarding the layoffs (R. 151-154). An examination of these conclusions reveals that they are nothing more than a reiteration of his other findings. In effect he says that since he found other violations of the Act based upon other testimony (most of which is discussed at other places herein), he therefore finds the layoffs to be violations. It is extremely difficult to follow this logic. The Record as a whole does not support it. It is significant therefore that the Examiner found it necessary to turn to Mr. Uspensky's work on mathematical probability in order to support his conclusions. The Board tried to help him by throwing in a few more findings of violations of Section 8(a)(1). But when it all boils down, the glaring defect in their case is that they decided it upon *mathematical probability, whim, suspicion, conjecture, false assumption and pure and simple guesswork.*

DISCHARGE OF LUCILLE YANCEY.

The case of Mrs. Lucille Yancey presents a perfect example of the Trial Examiner's predisposition to credit the Petitioner's witnesses while summarily dismissing Respondents' evidence.

Mrs. Yancey was discharged by Respondents on or about December 4, 1957. The reasons for the discharge were that Mrs. Yancey's work was poor, her attitude was generally bad and she was uncooperative. In spite of warnings about her sloppy work, make-up increased and her performance became increasingly poorer the longer

she worked for Respondents, culminating in six straight weeks of make-up pay (G. C. Ex. 29, R. 478).

Respondents produced six witnesses who verified that Yancey's performance justified her discharge. All were intimately familiar with Yancey's performance and represented not only supervisory staff (Scharff, Prosterman, and Higgins), but also her fellow workers (Odele Barnes, Imogene Meeks and Ruby Berry). All of these witnesses concurred in the testimony that Mrs. Yancey's work was unsatisfactory. All the supervisors who acted as overseers for Yancey are consistent in their testimony that Yancey had been terminated for good and valid reasons. All witnesses agreed that Yancey's work was poor and full of mistakes. The evidence showed that she used the wrong color thread (R. 85), that she sewed the wrong facing on the wrong lining and that the darts were sewn on the wrong side of the lining (R. 89). In short the quality of her work was shoddy (R. 85-91).

It was further shown, however, that the defective work and production were not the only place where Yancey proved to be a poor employee. The evidence also indicated that in addition to being "incompetent", "undesirable" and "unsatisfactory", she also "grumbled", "complained" and was generally uncooperative and unruly (R. 87-88). Besides complaining about the cut of the coat which she admittedly had difficulty sewing (R. 91), she is quoted to have said off-handedly to her supervisor, "Now, listen you are going to have to make it a little easier on us around here". (R. 188).

The Record further shows that Lucille Yancey signed a union authorization card (R. 327), but took no active part in organizing fellow employees (R. 525-526). This witness admits that no supervisor mentioned or discussed

the Union with her (R. 525). It is further clear that Lucille Yancey was discharged on December 4, 1957 (R. 328, 434-435), before a single Union meeting had occurred (R. 525). The evidence reveals that Lucille Yancey was discharged for cause (R. 615-621, 630-631, 640, 665). Even after her discharge this witness admits that the Respondents did not know of her union activity (R. 332).

Yet the Trial Examiner in the Intermediate Report states:

> "I am satisfied that Mrs. Yancey was discharged on December 4, 1957, because of her activity on behalf of the Union." (R. 98).

It is submitted that this employee had no Union activity other than signing a card, that there is absolutely not one iota of Company knowledge of any such activity on the part of this employee, direct indirect, imputed or otherwise. Scharff's testimony verifies this statement (R. 685).

Based on the facts of the Record, it is submitted that the General Counsel has not carried the burden of proof and that the findings of the Trial Examiner with respect to this alleged 8(a)(3) violation are completely erroneous and unjustified by the Record.

Two further points illustrate the fact that the Employer was understandably exasperated and completely non-plussed by the Trial Examiner's report and the Board's decision and that Mrs. Yancey's testimony on its face indicated that she was not a credible witness. First, is the fact that Yancey (whose testimony was fully credited while Meek's testimony was partly credited and partly discredited) (R. 90, n. 26; R. 94) testified that during the entire five months she had worked for Respondent she had *never* been given any instruction on how to do her work (R. 91). This statement is unbelievable. She had worked

for over five months, had been admonished every day and had made Higgins weep, but she had *never* been instructed in her job! Further, she denied arguments with Higgins and other employees and said all her discussions were "routine"—(routine discussions but no instructions)—and all her discussions with Higgins were on a friendly basis. Respondents suggest that Mrs. Yancey's term "discussions", which she admits having, is a euphemism for reprimands and instruction. In addition to Yancey's claim that she was never instructed in how to do her job, a statement made in the face of the admission that she had never sewn lining before, is the assertion that she never ripped out a single lining (R. 523). This in and of itself would lead one to doubt her veracity in view of the testimony of five other witnesses. This doubt is confirmed without question a moment later, however, when she says she did not rip out linings and that she sewed a completely "proper garment." (R. 524).

The other points regarding the tendency of the Trial Examiner to prejudge an employee and to arbitrarily give credit to one witness' testimony over the other without any reason is best illustrated by quoting one sentence from his opinion.

> "The only testimony regarding Yancey's alleged failure to distribute fullness properly was that of Prosterman and Higgins, whom I generally discredit and moreover, even if it occurred which I doubt, I am not persuaded that it was due to any lack of ability on the part of Mrs. Yancey but rather to the *skimpy* cut of the lining which she admittedly and frequently called to the attention of her supervisor." (Emphasis supplied) (R. 95).

Certainly we have administrative expertise here, the Trial Examiner, unknown to anybody in the hearing, claims to

know how to manufacture clothing. Yet he never examined the goods, never mentioned that he knew anything about the clothing business and never held Yancey up as an expert. This conclusion is unjustifiable.

These facts together with the clear indication that the Trial Examiner's predisposition in this matter supports the Employer's contention that his finding regarding the creditability of witnesses are not supported by the evidence and all ill-founded.

Petitioner, in its Brief, and the Trial Examiner, in his opinion, expound the virtues of Mrs. Yancey by showing that Mrs. Yancey had some past experience and that she had never been criticized for her work. Respondents' position on all such assertions by the General Counsel and on all the employees alleged to have been discriminated against, is that the experience asserted in favor of many of these people means nothing for the following reasons. First, some experience can be worthless or actually detrimental, especially in this type of operation since the product was a finished, quality men's coat. The sloppy and hurried methods used in the manufacture of cotton pants would hardly be transferable to those required in this plant where less workable cloths are used. Mrs. Yancey's experience was in a work clothes' plant at "Carwood". The Trial Examiner made no distinction between these two type operations.

Items such as make-up pay, work to be redone and Respondents' push for more production were a substitute for outright criticism. It would be hard to believe that they did not know when they were doing a substandard job. Besides this fact, another point which Petitioner attempts to make is the fact that Supervisors Prosterman and Morris Scharff's reasons for layoff were not consist-

ent. Prosterman said that there was not enough work for her (R. 84, 329), while Scharff told her that her work was "unsatisfactory" (R. 84, 330). The Employer asserts that in the existing situation where a cutback was concededly necessary that Petitioner is attempting to force a distinction here where there is none. Both witnesses were saying in effect that Mrs. Yancey's work was substandard and under present conditions she could not be retained. The problem was that Prosterman was given the job of firing her and he tried to do this as diplomatically as possible. Insofar as Lucille Yancey's statements regarding her *belief* that she had been terminated because of her Union membership, we point out to the Court that they were specifically denied by Morris Scharff (R. 86). In such a case the direct evidence should certainly prevail over the self-serving declaration of an interested party. The Trial Examiner credited the conjecture without apology. Noteworthy, also, is the fact that contrary to General Counsel's statement that the records did not show poor work or that the production was unsatisfactory, the payroll records (G. C. Ex. 29, R. 478) prove that Mrs. Yancey had six weeks of straight time (when she was not on a piece rate), eight weeks in which she made production and eight weeks in which she did not make production. Six of these weeks in which she failed to make production occurred just before she was terminated. At this time she had had six months training in Respondents' plant in addition to her other six years vast experience with Carwood. Later, when Yancey had a change of heart, Petitioner admitted the fact that Morris Scharff refused her offer to defect and become a turncoat against the Union (R. 685). Scharff was presented with a real opportunity here to do irreparable harm to the Union's organizational drive. It is to Scharff's credit, however, that he decided to forego this opportunity which

would have been irresistible to a person dedicated to anti-unionism and very tempting to the average employer.

The incongruity and hollow ring of this case arises in the presumption indulged in by the Trial Examiner that all the Employer's acts were a mere pretext for his vengeance against the Union.

If the evidence of this case is fairly read, the General Counsel has not made out his case. There is no evidence that the Employer knew of Yancey's Union leanings (R. 525-526, 685). She was not a member of the Union when she was fired. A short time after Prosterman became head of this operation she was discharged—there was no delay. The Company acted decisively when they felt justified in making a definitive judgment on this employee.

DISCHARGE OF GRACE McCART.

In the case of Grace McCart, who was discharged on January 10, 1958, the Court is again provided with direct and disinterested testimony to overcome the false assumptions, implications and innuendos which are relied on by General Counsel and the Trial Examiner in this case. The Employer submits that the testimony of Mr. Scharff, Mr. Prosterman and Mrs. Ewing, supervisors, and Sara Sanders and Charlotte Towler (disinterested employees of the Company) will dispel any doubt as to the incompetency of Grace McCart. McCart was discharged because of bad work (R. 508-510, 591, 599-603, 679-680, 694). She was admonished about the substandard quality of her work on numerous occasions (R. 591). In addition to McCart's difficulty with the thread, colors, machine and declining production, McCart also had difficulty with her supervisor, Myrtle Ewing, "on many occasions". (R. 98-100, 529). The aggregation of these "difficulties" led to McCart's discharge.

The Trial Examiner throughout the hearing required a high degree of explicitness of all Respondents' witnesses. He completely discounted, for instance, the testimony of two of Respondents' inspectors, who said that they found places where the thread skipped on collars and coats sewn by Mrs. McCart, because it was too vague. Yet, the Trial Examiner blandly offers the production records of October 11, 1958 (R. 101), a year *after* McCart's discharge and subsequent pre-employment, as definitive evidence that Prosterman's testimony regarding her poor production was inconsistent. Whatever production rate McCart may have been able to achieve more than a year *after* her discharge and after she started to work again, is not relevant evidence to the period in question, *viz.*, around October, 1957.

On another occasion General Counsel tried to establish the point that the reasons for McCart's discharge were (1) the malfunction of her sewing machine (which happened to be new), and (2) McCart's union activities. If we are allowed the same presumption as the Trial Examiner indulged in, the Employer respectfully submits that no self-respecting businessman, Scharff included, who wanted to stay in business, would permit the malfunction of a small item such as a sewing machine to eliminate the effectiveness of an employee's work. Her wages would more than pay for a new machine in a very short time. The testimony shows and the Trial Examiner admitted (R. 98) that the machine was new and that the plant mechanic repeatedly fixed the machine and was continually checking it. It seems reasonable then to assert that the real reason for McCart's failure to make production was not the machine but her own inability or lack of desire to master the operation. *McCart alleged the machine wouldn't do as good work on gabardine material as on*

other materials (R. 350-351, 529). *General Counsel's witnesses, Hester McCart and Mary Alice McWaters, however, testified gabardine did not give any more trouble than any other material and that the "Lewis Blind Stitching Machine" worked satisfactorily* (R. 377). This leaves but one conclusion; any failure of the machine to operate properly was the fault of the operator. McCart also testified that she had another machine at her disposal if her machine happened to malfunction. The Trial Examiner blithely overlooked this fact when he attributed so many of McCart's shortcomings to the equipment with which she worked (R. 102).

Insofar as McCart's union activity is concerned, Morris Scharff testified that at the time Grace McCart was discharged he did not know whether she belonged to a union or not (R. 680, 700). This testimony is again indicative of the fact that the reason for McCart's discharge was not her union activity but her continual incompetency as an operator. The Record reveals this employee had make-up pay, was poor as a sewer (R. 407), produced bad work (R. 351-353, 407, 411, 595, 599-601) and was corrected regularly about her work (R. 591). She was discharged on January 9 or 10, 1958, by both her supervisors and told that her work was unsatisfactory for so long that they had to let her go (R. 351). The only reason she had not been discharged before, according to the supervisor, was that Supervisor Prosterman had no one else available in the factory to use the Lewis machine (R. 657).

Mrs. McCart, in her testimony related a conversation which she had with Morris Scharff *after* her discharge. General Counsel, in making much of this conversation, does not emphasize or even mention the fact that Morris Scharff, when presented with her accusation that she was fired because of union activities, denied this fact and promptly

explained to her that the real reason for her discharge was her unsatisfactory work. Neither is the fact mentioned that it was McCart, not Scharff, who first introduced the subject of union into the conversation. Upon her making the inquiry, Scharff, who was evidently surprised by this accusation since he knew nothing of her union activity, then felt free to discuss the matter with this discharged employee.

It is important that Counsel for the General Counsel never established that this employee had signed for the Union or engaged in any Union activity. Thus, the Trial Examiner has, upon the basis of a conversation occurring *after* her discharge between the alleged discriminatee and Morris Scharff, found that the Respondents discriminated in respect to the hire and tenure of employment of Grace McCart (R. 102).

Except for this conversation with Scharff, Mrs. McCart admits in her testimony that she had never been interrogated regarding her Union activity by any member of management in the plant (R. 530).

The *facts* as shown by the testimony indicate that Mrs. McCart was an incompetent employee. The testimony of numerous witnesses verifies this fact. She had trouble with Myrtle Ewing and the machine, in spite of the fact that the machine was brand new and she had another one available (R. 530). After her discharge she had a conversation with Morris Scharff in which she interjected the subject of Union into the conversation, and after Scharff denied he had discharged her because of her Union activity, a short discussion on unions resulted in the natural course of events. Respondents respectfully aver that the paucity of evidence is insufficient to sustain the Board's finding of discriminatory discharge.

DISCHARGE OF PEARL COKER.

Mrs. Pearl Coker was discharged because she could not produce a sufficient quantity of work and because her operation was absorbed by three other employees, Mary Lou Partain, Hester McCart and later Louise Sammons. Mary Lou Partain, a Union advocate whose name appeared on the Union letter as a member of the organizing committee, was retained over Mrs. Coker.

These circumstances prove that Respondents' predicament was a hopeless one. Unless Respondents laid off Hester McCart, a concededly superior worker, they were placed in the unhappy situation of choosing between two Union employees for the layoff. As later developments proved, there was no possible way to win in such a situation—allegations of discrimination waited for them either way they turned. Higgins testified that the section was too "strong"—meaning they had too many employees on this operation. Thus, one operator had to be laid off. Since there had to be a layoff, Pearl Coker was chosen because she was a slow operator and she apparently could not make production (R. 416-417, 622). Neither could she set a collar properly nor adjust its fullness correctly. Frequently, Coker's work had to be redone (R. 622). Although Partain's work left much to be desired and she was admittedly slow in this operation, it was decided that because of her ability to perform additional operations in the section she would be retained. Coker made no pretense of being versatile and at that particular time a versatile operator was needed until Louise Sammons could return to work (R. 696-697). But here was no need for two operators—one versatile and one not. Partain was then soon moved to utility girl where she properly belonged. Thus Partain was Pearl Coker's temporary replacement until Sammons could come back for the Spring

season from a leave of absence (R. 563). Partain was kept on in order to maintain some degree of flexibility in the operation.

Pearl Coker was rehired some eight months later to fill in a gap in production. The reasons for the rehiring were that Mary Lou Partain had quit in the interim (R. 624) and Mrs. Coker would not need retraining. Further, the quantity of garments needed was higher than it was in January, 1958. Coker, it was judged, could supply just about the amount of production needed to balance the section's production with the rest of the shop. A faster operator would have produced too many collars and created an imbalance. This explains the hiatus period to which the Trial Examiner referred. (R. 106).

Contrary to the General Counsel's glowing opinion of Mrs. Coker and the statement that her work was never criticized, Mrs. Coker's testimony admits that she continually had make-up pay, even up to the time she was fired on January 15, 1958 (R. 526-527).

Pearl Coker testified on cross-examination that she did not actively work for the Union and never even attempted to sign up anyone for the Union. General Counsel points to the fact that on January 10, 1958, Pearl Coker told her supervisor, Grace Higgins, that she had attended a Union meeting the previous evening and that shortly after making this statement she was discharged. This fact alone was apparently enough for the Trial Examiner to find that there had been a discriminatory discharge. In order to justify his position, the Trial Examiner referred to a conversation which was supposed to have taken place between Mrs. Higgins and Mrs. Coker in which Higgins was alleged to have said that Morris Scharff had informed them in a supervisors' meeting that he would

close down the plant before they would allow union labor in the plant. What was not referred to in connection with this conversation, however, was the fact that there was at least one other employee present at this conversation. Not only was she not mentioned, but she was not called upon to corroborate this hearsay testimony. Hester McCart was present and overheard the entire conversation (R. 106).

Strangely enough, however, McCart did not hear Higgins give the account of the supervisors' meeting (R. 106). Higgins likewise did not remember giving the account of the supervisors' meeting where this statement was alleged to have been made (R. 627). It would be difficult to believe that such a statement was made in view of the other circumstances in the case. Certainly, if it had been made Hester McCart, another employee who was present, would have heard it, and certainly would have been much more impressed with that than with the original remark by Pearl Coker about attending a Union meeting. Presumably, this testimony was offered for two purposes, one, to get in the alleged threat by Grace Higgins and the other to prove that the Company knew Pearl Coker had been to a Union meeting about the time she was fired. This was January 15, six weeks or so after the Union campaign had started. It does not seem logical that the Company would at this time fire an employee who had simply attended a Union meeting and who came to her supervisor and advised her of the fact. She did not say that she had joined the Union or believed in the Union, she simply stated that she had been to a meeting, and that is the Board's case with regard to Pearl Coker. The facts show that Pearl Coker was discharged for reasons entirely apart from her attendance at a Union meeting. In the first place, Pearl Coker was unable to pro-

duce the quantity that was needed on her job. A comparison between her production (G. C. Ex. 37) and that of Hester McCart (G. C. Ex. 38) illustrates this point better than words. The same point is illustrated in comparing Coker's record with that of Louise Sammons (Resp. Ex. 43). The Record is unquestioned that more production was required from the particular job that Pearl Coker was doing. Another operator who had previously been employed and was known to the management to be competent and more efficient than Mrs. Coker was available. Three operators were not needed on the job if you had two good ones. Hester McCart and Louise Sammons were both better operators than Pearl Coker, and for that reason, and that reason alone, Pearl Coker was discharged and Louise Sammons was put in her place. Mr. Prosterman summed up the circumstances surrounding Pearl Coker's discharge in the following words: "I had two operators available who were capable of turning out production and earning a great deal more and I thought Pearl Coker was surplus." (R. 309). This is also supported by the uncontested evidence (R. 415-417, 465-466, 622-624, 687).

Based on the facts presented in the Record, Respondents submit that a thorough reading of this testimony, stripped of any facts supplied from outside the Record, will yield no other conclusion except that this employee was justifiably discharged.

DISCHARGE OF RUTH BROOKS.

Ruth Brooks was discharged from the pants plant on January 16, 1958, by Mr. Hughley (R. 109). Mrs. Brooks admitted that she did not make production and that she had difficulty doing the work. The conceded facts are that layoff was necessary and that the work force was to

be severely cut from approximately thirty-eight operators to twenty-two operators (R. 102, 113). Any vague accusation as to discrimination in the discharge pales under the weight of this evidence. There can be no dispute, contrary to the Trial Examiner's assertion (R. 111, n. 40) that there was not a reduction in the work force, since in three months time the employee complement dropped from forty-three to twenty-six employees and ultimately to nineteen (Resp. Ex. 7).

The true facts concerning this employee furnishes another example of why the alleged virtues of this employee are not founded upon real evidence. The finding by the Trial Examiner that Ruth Brooks had had a great deal of qualifying experience, had *never* been criticized in her job and was a "good" operator is a gross misstatement of fact. Specifically, the uncontradicted evidence shows that (1) in spite of Ruth Brooks' experience she was a poor employee and by her own admission had an abnormal amount of make-up (R. 560); (2) she was fully apprised of her inadequate performance, was distressed about it, and had been criticized directly and forcefully. The following specific testimony illustrates these facts: (R. 560, 561)

> "Q. Did you have difficulty doing the work that you were doing down there?
>
> A. At times.
>
> * * *
>
> A. I told her about the different places that I had worked before and that I had always made production everywhere I worked until I came there. And there was something wrong somewhere why I couldn't make it.
>
> * * *
>
> A. I went in to see him one morning and he was back there at my machine and we talked about my operation

and I told him that I wasn't satisfied with it. And he said, 'Frankly, I'm not either.'

Q. Now when you were told to go up to the other plant and report—you remember testifying to that?

A. Yes.

Q. Why didn't you go up there the next day?

A. Because I was with Lucille Yancey the morning that she asked Arthur Scharff about any of the employees being transferred to the pants department. And he said that no one would be transferred whatsoever. And after I had talked with him about—he told me that I either—I talked to Morris, and he told me that I either had to get my production or else * * *."

The reasons offered by Respondent for Ruth Brooks' discharge were that she did not produce enough. Contrary to the Petitioner's assertion, that her production record matched that of other employees, the above excerpts from the testimony clearly indicate that her work was, in fact, below par. Indicative of the fact that the Trial Examiner's assertion that this employee was beyond reproach actually misconstrues the testimony is revealed by the incident in the Record which establishes that this employee was at one time close to committing an act of insubordination. Ruth Brooks testified that she was instructed by her Employer to report to the pants plant for work the next morning. She admits that on that occasion she turned and walked off without making any reply and did not report to work the next morning as directed. Certainly, if the Employer were looking for an occasion or a reason to discharge an employee he was provided with a golden opportunity at this point. The fact is, however, that he wished to give Ruth Brooks a chance to prove herself and make production in the pants plant, the facet of his operation which required less skill.

Further justification for the discharge of this employee, if further justification is necessary, are the facts that the personnel of the pants plant fluctuated from forty-eight employees to nineteen employees, over a three to four month period, and that both of Respondents' operations were in the process of being moved into one building. Under such circumstances it is not strange that an employee whose profile as a worker is graphically depicted above should be released. Indeed, it is strange that anyone could question the discharge or the fact that in this as in other instances the quality of mercy was strained to the limit.

II. The Law

The Court of Appeals took cognizance of and gave effect to the valid principles of law governing the scope of review of Board decisions as contained in Section 10 (e) of the Act, and the controlling decisions of this Honorable Court.

The Petitioner argues that the Court of Appeals "grossly misapplied" the law in this case. In support of that proposition it has been contended that the Fifth Circuit, in a long line of cases, has applied a standard of review in cases of this kind which goes beyond its statutory authority. An examination of the record in this case, the controlling authorities and the Court of Appeals decision reveal this argument to be wholly without merit.

The true question before this Court is whether a Court of Appeals must follow the mandate of Section 10 (e) of the Act and consider the Record *as a whole* (which this Court has frequently said that it must do) or whether it shall be confined to such evidence in the Record as may be favorable to the Board's decision without taking into account whatever in the Record fairly detracts from its weight. The Board's evidence in this case was an extremely meager amount of proof, to say the most for it

The inferences and conclusions which were drawn from that bare minimum of evidence both in the decisions of the Trial Examiner and the Board far exceed the facts. When this evidence is viewed in the light of the overwhelming evidence to the contrary, it simply does not support the decision.

A reading of the opinion of the Court below clearly shows that the Court of Appeals was appalled at the complete lack of proof on the part of the Board. The basis of the refusal to enforce was not the substituting of fairly conflicting inferences but the realization that the Board had drawn unfair, illogical inferences. The inferences and conclusions of the Board were not based upon facts.

In effect, the Petitioner is contending that if there is any proof whatsoever to support the Board's decision, however meager, then the Court of Appeals must enforce. This has not been the law for a number of years, and it was not the intention of Congress that it be the law.

The National Labor Relations Act, as amended, *supra*, provides in Section 10 (e):

> "The findings of the Board with respect to questions of fact if supported by substantial evidence on the Record *considered as a whole* shall be conclusive." (Emphasis supplied).

Prior to the enactment of the Taft-Hartley Act the scope of review of Board orders tended toward a consideration of evidence viewed in isolation. As this Court said in *Universal Camera Corporation* v. *NLRB*, 340 U.S. 474, 478:

> "It is fair to say that by imperceptible steps regard for the fact-finding function of the Board led to the assumption that the requirements of the Wagner Act were met when the reviewing court could find in

> the Record evidence which, when viewed in isolation substantiated the Board's findings."

It was under this view of the Wagner Act requirements prior to Taft-Hartley, that the decision in *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U.S. 206, to which the Petitioner adverts (P. p. 30); was reached. The case of *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, upon which the Petitioner relies so heavily, was also prior to the Taft-Hartley amendment which expressly enlarged the scope of review by requiring a consideration of the Record as a whole. This Court in *Universal Camera* recognized that Congress intended to modify *Nevada Consolidated*:

> "This phraseology was adopted by the Senate. The House conferees agreed. They reported to the House: 'It is believed that the provisions of the conference agreement relating to the courts' reviewing power will be adequate to preclude such decisions as those in *NLRB* v. *Nevada Consol. Copper Corp.*, 316 U.S. 105, 62 S. Ct. 960, 86 L. Ed. 1305, and in the *Wilson*, *Columbia Products*, *Union Pacific Stages*, *Hearst*, *Republic Aviation*, and *Le Tourneau*, etc., cases, *supra*, without unduly burdening the courts.' The Senate version became the law." (pp. 485-486).

Furthermore, in *Universal Camera*, this Court stated:

> "From the legislative story we have summarized, two concrete conclusions do emerge. One is the identity of aim of the Administrative Procedure Act and the Taft-Hartley Act regarding the proof with which the Labor Board must support a decision. The other is that now Congress has left no room for doubt as to the kind of scrutiny which a court of appeals must give the Record before the Board to satisfy itself that the Board's order rests on adequate proof.

"It would be mischievous word-playing to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. * * *

"Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. * * * (pp. 487-488).

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds." (p. 490)

The decision of the Court of Appeals in this case is in complete harmony with the principles enunciated in *Universal Camera*. The argument of Petitioner in this case is in direct conflict with those principles. See also: *Cross Company* v. *N.L.R.B.*, 286 F.2d 799 (C.A. 6, 1961).

The very thing about which the Petitioner truly complains is likewise the very thing which this Court has said the Courts of Appeals are required by law to do—review the record *as a whole*—"take into account whatever in the Record fairly detracts from its weight".

Contrary to the Petitioner's argument, the Fifth Circuit has long recognized its duty and its limitaton in reviewing

Labor Board orders. See, for example, *N.L.R.B.* v. *Poultry Enterprises, Inc.*, 207 F.2d 522 (C.A. 5, 1953). The Court of Appeals in this very case specifically enumerated these duties and limitations. The Court of Appeals said:

> "The resolving of evidentiary conflicts is within the province of the Board." (R. 724).
>
> "We are aware of the requirement that we are not to overturn the Board's findings if supported by substantial evidence in the record as a whole. We recognize the principle that the substantial evidence rule applies to the choice of inferences as well as to the finding of facts as facts. *NLRB* v. *Birmingham Publishing Co.*, 5th Cir. 1958, 262 F.2d 2. We do not question the settled doctrine that the Court should not, as a general proposition, disturb the action of the Examiner and the Board in crediting or discrediting the testimony of a witness. *NLRB* v. *West Point Manufacturing Co.*, 5th Cir. 1957, 245 F.2d 783; *NLRB* v. *Newton Co.*, 5th Cir. 1956, 236 F.2d 438." (R. 726-727).
>
> "This Court has had frequent occasion to announce and develop the doctrine that if it appears that there is substantial evidence on the record as a whole to make the inference of legal or illegal discharge reasonably equal, we may not overturn the Board's finding of an illegal discharge"
>
> *N. L. R. B.* v. *Dan River Mills, Inc.*, 5th Cir. 1960, 274 F.2d 381; *N. L. R. B.* v. *Fox Manufacturing Co.*, 5th Cir. 1956, 238 F.2d 211; *N. L. R. B.* v. *Newton Co.*, 5th Cir. 1956, 236 F.2d 438; *N. L. R. B.* v. *McGahey*, 5th Cir. 1956, 233 F.2d 406; *N. L. R. B.* v. *Coats & Clark, Inc.*, 5th Cir. 1956, 231 F.2d 567, *N. L. R. B.* v. *Houston Chronicle Publishing Co.*, 5th Cir. 1954, 211 F.2d 848 (R. 727).

It is difficult to conceive of a more forthright statement of the valid principles of law applicable to a case of this kind. Certainly it cannot be said that the Court of

Appeals was unaware of these controlling principles in reaching its decision. It is inconceivable that the Fifth Circuit, or any other Circuit, would deliberately misapply these or any other governing principles. Yet that is the Petitioner's contention in this case.

This is not a case which contains some novel point of law. This is not a situation where the Fifth Circuit is following an interpretation of the law which is in conflict with another circuit. The principles applicable to this case have long ago been enunciated by this Court and the Court below took express cognizance of them. This is a case where the Court of Appeals reviewed the Record as a whole and made a finding that the decision of the National Labor Relations Board was not based upon substantial evidence. There can be no doubt that the Court of Appeals recognized its clear responsibility in this regard:

> "As we must do in these 'substantial evidence' cases, we have undertaken the tedious task of reading the record and reviewing the evidence; tedious because of the necessity of going from the Board's appendix to the employer's appendix, and so back and forth from one to the other, in an effort to piece together the isolated excerpts of testimony which each party has extracted for the purpose of supporting the position for which it contends. The Board incorporates into its appendix nineteen separate quotations from the testimony of the witness, Morris Scharff, and the employer includes thirty-seven selections, from the testimony of this witness. The same is also true, to a lesser degree, with respect to the testimony of twenty-five or more of the other witnesses. Our decision is to be based upon the record considered as a whole. Parts of the record, taken out of context, are not to be considered piecemeal, but we are to consider the record in its entirety and as a unit. This we have attempted to do." (R. 722)

The detailed analysis of the Record clearly establishes that the Court below did study the Record as a whole and did make a fair evaluation of it. The Court of Appeals stated:

> "We have the *firm conviction* that there is not substantial evidence on the record as a whole that the discharge of Mrs. Yancey was wrongful (R. 730).
>
> "We reach the same conclusion with respect to Grace McCart, Pearl Coker and Ruth Brooks." (R. 730).
>
> * * *
>
> "The Examiner, however, and the Board, rejected the reasons asserted by the Respondents and found the motive for the selection of the nine committeemen was their union membership. In so doing the Board placed its own evaluations upon the factual situations, assumed managerial prerogatives, and reached the conclusions that good business judgment would not have justified the Respondents in their selections for layoff and therefore, says the Board, the motive was the unlawful one." (R. 732)
>
> "We reached the conclusion that the Board's General Counsel has failed to carry the burden of showing by substantial evidence on the record as a whole that the layoffs were discriminatory. * * *" (R. 733).

This Court has recognized that the review of the Record in Labor Board cases is the statutory function of the Courts of Appeals. In the case of *Universal Camera Corp.* v. *NLRB, supra,* this Court said at page 491:

> "Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals."
>
> * * *
>
> "A formula for judicial review of administrative action may afford grounds for certitude but cannot as-

sure certainty of application. Some scope for judicial discretion in applying the formula can be avoided only by falsifying the actual process of judging or by using the formula as an instrument of futile casuistry. It cannot be too often repeated that judges are not automata. The ultimate reliance for the fair operation of any standard is a judiciary of high competence and character and the constant play of an informed professional critique upon its work."

Again in *NLRB* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, this Court stated at page 502:

"* * * The Court painstakingly reviewed the record and unanimously concluded that the inferences on which the Board's findings were based were so overborne by evidence calling for contrary inferences that the findings of the Board could not, on the consideration of the whole record, be deemed to be supported by 'substantial' evidence.

"Were we called upon the pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Court of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders."

* * *

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situations we should 'adhere

to the usual rule of non-interference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations.' *Federal Trade Comm'n* v. *American Tobacco Co.*, 274 U.S. 543, 544, 47 S. Ct. 663, 71 L. Ed. 1193."

The Petitioner in this case is seeking to have this Court reverse a decision of the Fifth Circuit which turned solely on an evaluation of testimony. It is clear from a reading of that decision that the Court of Appeals conscientiously and painstakingly considered the entire Record and reached the unanimous decision that the findings of the Board could not be deemed to be supported by "substantial" evidence.

A fair appraisal of the Record in this case, considered as a whole, can only lead to the conclusion that the Board's decision is completely unsupported by substantial evidence, that the General Counsel for the Board failed to carry the burden of proof and that the decision of the Board was the result of blind adherence to rigid formulae, unsupported inference, conjecture and surmise rather than judicial reasoning and a fair and impartial valuation of the evidence.

It is the Respondent's contention that the Trial Examiner could not, based on the evidence in the Record and the legitimate inferences drawn therefrom, correctly find that the Petitioner had sustained the burden of proof and that a case of discrimination had been made out.

The Trial Examiner obviously allowed outside, irrelevant matters to so prejudice his mind that he was unable to reach a fair and impartial decision in this case. The only direct evidence in the testimony as to the motive behind the discharges and layoffs was that of Morris Scharff himself and other members of the management staff. Each testified that the cutback was planned and

resulted according to schedule. Morris Scharff asserted directly in his testimony that their union activity was not the reason for these employees' termination and that he told each employee who inquired, individually, that union membership or union advocacy was not the reason for their termination. The only evidence to contradict the testimony is that of the alleged discriminatees who testified as interested parties that they *believed* that they were terminated for union reasons. Likewise, in each case Scharff's testimony was corroborated by the testimony of the supervisors and *other* disinterested employees. In each case reasons were given why these employees had been selected for termination. These reasons when combined with the undisputed fact that a layoff was necessary completely justify the Respondents' position and should be controlling. Certainly, the weight of this testimony is greater than that offered to the contrary. The Employer, proved that each termination was justifiable on sound business principles. The burden, however, is upon the General Counsel. The Court of Appeals for the Fifth Circuit ruled on this issue in *N.L.R.B.* v. *McGahey*, 233 F.2d 402 (C.A. 5-1956):

> "It is rather on General Counsel to establish by acceptable substantial evidence on the record as a whole that discharge came from the forbidden motive of interference in employee statutory rights." (Citing *N.L.R.B.* v. *Miami Coca-Cola Bottling Co.*, 5th Cir., 222 F.2d 341; *N.L.R.B.* v. *Brady Aviation Corp.*, 5th Cir., 224 F.2d 23; *N.L.R.B.* v. *Alco Feed Mills*, 5th Cir., 133 F.2d 419; *N.L.R.B.* v. *Tex-O-Kan Flour Mills*, 5th Cir., 122 F.2d 433; *N.L.R.B.* v. *Ray Smith Transport Co.*, 5th Cir., 193 F.2d 142.

General Counsel, however, in attempting to sustain this burden introduced testimony which was made up of hearsay, conclusions and sheer conjecture as to the Em-

ployer's motive. Although all the General Counsel's witnesses who were interested parties were present in the hearing room, their testimony is replete with contradictions and unfounded conclusions. Yet, the Trial Examiner saw fit to credit every one of these witnesses and to discredit every witness testifying for Respondents. The result is an opinion based on unbelievable evidence which cannot be considered as reasonable to support a conclusion. The Petitioner, on the basis of the Record, did not sustain its burden of proof sufficiently for the trier of fact to resolve the question against Respondent.

The pervasiveness of agency actions enhances the need for added assurance that the judiciary will not abdicate its functions in restraining overzealous agency action. The notions of agency expertise and their propensity for making policies and enacting doctrines cannot displace the Court's area of competency—that of weighing the evidence, drawing necessary inferences and guaranteeing that the legislative mandate and judicial decisions are applied evenhandedly. Respondents have, insofar as possible in their review of the voluminous record of the case, attempted to convey to the Court its reasons why this case emits a hollow ring. There has been in effect only one decision on the decisive issues of the case—the Board gave no more than a passing nod to the Trial Examiner's lengthy and involved opinion, which covered 106 printed pages in the Record. *N.L.R.B.* v. *Cosco Products Co.*, 280 F.2d 905 (C.A. 5, 1960).

Close investigation has borne out, however, that the approach was one of a predisposed mind. That Respondents' case had been prejudiced to some degree is amply illustrated by the Trial Examiner's failure to credit *any* of the Respondents' witnesses while at the same time asserting with dogmatic certainty that the interested witnesses of Petitioner are beyond reproach. *Farmer Co-*

Operative Co. v. *N.L.R.B.*, 208 F.2d 296 (8th Cir. 1953). Yet, there were pointed out examples of reliance on hearsay, inconsistencies, contradictions and misstatements in their testimony. *Victor Products Corp.* v. *N.L.R.B.*, 208 F.2d 834 (D.C. Cir. 1953). On the other hand, Respondents have offered specific and reasonable explanation for discrepancies which were alleged to be in Respondents' testimony, direct evidence refuting hearsay evidence and witnesses from every section and division of the plant—interested and disinterested—but all of whom except Morris Scharff were absent from the hearing during the taking of testimony. In spite of these facts and the variance in the testimony, the Trial Examiner wrote an opinion which resolved every issue of doubt against the Respondent. If the conclusions and implications are accepted, his decision sounds very convincing on first impression. A close investigation of the inferences drawn from the testimony indicates that they are not reasonable ones.

Inference 1. The Trial Examiner inferred from the testimony, particularly Morris Scharff's speech, that the Respondents were strongly anti-union. This inference may or may not be justified, but Respondents contend that anti-unionism *per se*, even expressed, is not violative of the law so long as it is not translated into an act of discrimination. *N.L.R.B.* v. *McGahey, supra.* However, the Respondents submit that the evidence does not support a clear cut conclusion on the issue of his anti-union feeling and while it may be reasonable to support either finding, a conclusion that the Employer is not anti-union to the point of allowing it to influence its business judgment is the only reasonable one to be drawn from the evidence.

The Employer in his speech is said to have intimated company animosity and made a threat to close the plant. The transcript of these speeches, however, are part of the

Record and were accepted both by the Board and the Trial Examiner as accurate. They do not verify the conclusion asserted by some of Petitioner's witnesses that they contained a threat to close the plant. Copies of these speeches did indicate, however, that Scharff was interested in his employees knowing both sides of the story. The Union organizers had called privately at the houses of his employees, had used every means of persuasion to get them to join the Union. Undoubtedly, their prime argument was that Scharff was not giving them what they deserved. They undoubtedly offered great promises. Scharff's action and only motive was to give them the other side of the story, to convey a personal experience and impression he had had and to make it clear that they would attempt always to treat their employees fairly, but would not allow other people to make his decisions and he hoped his employees would do likewise. In this speech, however, he did tell his employees and made it quite clear that their choice on the Union was theirs and theirs alone to make. The Court of Appeals recognized this in its opinion.

Further evidence offered as indicative of Respondents' anti-union attitude were the incidents which evolved around the letter which the Employer interpreted as a threat not to lay off or discharge, according to sound business judgment, but only employees other than Union employees. Respondents admit inquiry of the employees to find out if they authorized the use of the letter. Certainly, the Employer was justified in confirming the use of their names for this purpose. Nellie Wood's testimony, *supra*, amply illustrates the point that some employees had been misled and had misunderstood what they were doing when they signed the Union card. Scharff was, in effect, attempting to see that no employee's name was used for something he did not authorize. After confirmation of

these employees he made a check by those who had been asked if they so authorized their names and a dash by those whom he had not been able to contact. General Counsel and the Trial Examiner made much of these marks—the Court of Appeals was unable to see any malicious intent behind these marks, especially in view of subsequent events. Scharff then posted the letter. In posting the letter Scharff accomplished two things—(1) he helped advise all those who may have believed that the Employer could take some retaliatory action to realize that they could be protected in the free exercise of their rights, and (2) advertised the fact that he would have to be above reproach in dealing with these employees and undoubtedly sent any employee who felt somewhat insecure in his position scurrying after the same protection and preferred treatment that the employees named in the letter were getting. If interpreted fairly, the result of the alleged interrogation and posting of the letter then fail to establish the inference drawn, *i. e.*, that these acts were coercive and discriminatory in nature and showed anti-union animus.

Finally, the discharges and layoffs of these people who were on the Union organizing committee is said to have been motivated by an anti-union attitude and, therefore, is illustrative of the Employer's dislike for the Union. This pat theory is destroyed, however, by the fact that non-union employees were laid off and discharged also.

Further, some of the employees were discharged before the letter was received, indicating that certainly it had not triggered any new policies or that the cutback was a pretext. All those terminated were laid off or discharged either for cause or had fallen victim to the Employer's selective process in reaching a permanent work force. The evidence supports these inferences.

The Petitioner argues that the Record does not show that the Union was aware that a layoff was forthcoming when it dispatched its letter to Respondents. An inference of such knowledge would certainly be more reasonable than many of those drawn by the Trial Examiner. It seems clear that the purpose of the letter was to obtain preferred treatment for those employees who had signed up with the Union in the face of a mass cutback in the work force. The Trial Examiner and the Board concluded that *none* of the Union adherents should have been laid off. This conclusion was reached in spite of the fact that it was admitted that such a layoff was necessary for economic reasons. If these findings are enforced, then the purpose of the Act will have been distorted to mean that all Union advocates must be given preferential treatment over non-union employees with regard to employment status. While the Board merely ruled that these particular employees should not have been laid off, implicit in this ruling is the proposition that the other employees with whom they were compared should have been laid off since it is unquestioned that a layoff was necessary. This cannot be anything but a complicated business judgment, for which Respondents' officials were far more qualified than the Trial Examiner or the Board. But even aside from this, a retention of the employees who were laid off in preference to those who were retained would have produced a result so highly discriminatory in practically every instance as to be patently obvious to even the most naive mind. To be sure, in a situation such as this (assuming them to be union members) the Board would have found discrimination, and perhaps with good cause.

Inference 2. The second inference indulged in was that all of the Respondents' witnesses were not worthy of belief. Respondents contend this inference is not reasonable for

the reasons stated above, *i. e.*, that they represented all parts of the plant, were not present in the hearing room, were not interested parties and that their corroborated testimony—not based on sheer hearsay—was equally, if not more worthy of belief than Petitioners. The discrepancies and inconsistencies of Petitioner's witnesses' testimony have been pointed out above. A fair reading of the testimony indicates that they were not telling the truth.

Inference 3. The Trial Examiner's third major inference is a very important one and should foreclose argument on most of the issues involved because it is unsound and completely unjustified.

The Trial Examiner inferred that the Respondents were consumed by their anti-union motives (thereby imposing inference on inference) and would subvert all business judgment to their one impliedly avowed purpose—to "crush the Union."

The Respondents have shown by clear and convincing evidence that they went through a painfully slow and studied attempt to size-up each employee for the layoff and that each layoff or discharge was a result of this scrutiny. Sound reasons were offered for every employee laid off or discharged.

The General Counsel offered no evidence to the contrary. The Trial Examiner and the Board decided that Respondents were wholly consumed with anti-union feelings and therefore refused to believe the detailed explanation of the factors which controlled each individual case. In doing so, the Trial Examiner and the Board substituted their judgment for the judgment of highly qualified management in matters of business discretion. The fact that the Board came up with a wholesale decision against Respondent in each case illustrates its complete inability to

properly weigh the multiplicity of factors which necessarily come into play in the business process of making such determinations. The Trial Examiner's obsession with formulae and his blindness to the varying circumstances of each individual layoff decision, undoubtedly occasioned by his lack of experience in arriving at complicated management decisions in this, or any industry, is the underlying, fatal weakness in the Petitioner's case. The Board's decision runs directly counter to the basic principle stated by the Fifth Circuit Court in the case of *N.L.R.B.* v. *McGahey, supra*:

> "The Board's error is the frequent one in which the existence of the reasons stated by the employer as the basis for the discharge is evaluated in terms of its reasonableness. * * * But as we have so often said: management is for management. Neither Board nor Court can second-guess it or give it gentle guidance by over-the-shoulder supervision. Management can discharge for good cause, or bad cause, or no cause at all. It has, as the master of its own business affairs, complete freedom with but one specific, definite qualification: it may not discharge when the real motivating purpose is to do that which Section 8(a)(3) forbids. *N.L.R.B.* v. *Nabors, supra; N.L.R.B.* v. *National Paper Co., supra; N.L.R.B.* v. *Blue Bell, Inc., supra, N.L.R.B.* v. *C. & J. Camp, Inc., supra.* * * *"

CONCLUSION

Respondents submit that the decision of the Court of Appeals in refusing to enforce in part the order of the National Labor Relations Board was a correct exercise of the statutory review powers of that Court. The Board's decision is not supported by substantial evidence in the

Record, considered as a whole. The unanimous decision of the Court below should be affirmed.

Respectfully submitted,

WILSON, BRANCH AND BARWICK,

615 Rhodes-Haverty
Building,
Atlanta 3, Georgia,
JAckson 4-3611.

By: .....,
ALEXANDER E. WILSON, JR.,

By: .....,
ROBERT T. THOMPSON.